

AMENDMENTS TO THE MASSACHUSETTS LOCAL BANKRUPTCY RULES

EFFECTIVE JANUARY 1, 2005

BLACK-LINED AND WITH COMMENTS¹

¹The Comments contained herein are for training purposes only and do not constitute official comments of the United States Bankruptcy Court for the District of Massachusetts. Accordingly, they may not be cited to the Court in connection with any case.

PROPOSED RULE CHANGES

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RULE 1001-1 TITLE

PROPOSED AMENDMENT

These Local Bankruptcy Rules, promulgated under Fed. R. Bankr. P. 9029, shall be known as the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Massachusetts, a unit of the United States District Court for the District of Massachusetts, and shall be referred to in abbreviation as MLBR. These rules shall take effect on January 1, 2005 with respect to pending cases and those filed thereafter, and shall govern all proceedings in bankruptcy cases insofar as is just and practicable.

RED-LINED RULE

These Local Bankruptcy Rules, promulgated under Fed. R. Bankr. P. 9029, shall be known as the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Massachusetts, a unit of the United States District Court for the District of Massachusetts, and shall be referred to in abbreviation as MLBR. These rules shall take effect on ~~March~~January 1, 2003~~5~~ with respect to pending cases and those filed thereafter, and shall govern all proceedings in bankruptcy cases insofar as is just and practicable.

COMMENTS

This change reflects the effective date of the amended rules.

RULE 1002-1 CASE COMMENCEMENT

PROPOSED AMENDMENT

Deleted

(NO REPLACEMENT)

RED-LINED RULE

~~(a) Form~~

~~———— The original petition and the required number of copies commencing a case filed with the Clerk of this Court shall be collated in proper sequence and stapled.~~

~~(b) Number of Copies~~

~~———— (1) In a chapter 7 or 13 case, an original and three (3) copies of the petition commencing the case and an original and three (3) copies of the list, schedules and~~

~~statements required by Fed. R. Bankr. P. 1007 shall be filed with the Clerk.~~

~~(2) In a chapter 9, 11 or 12 case, an original and six (6) copies of a petition commencing a case and an original and six (6) copies of the list, schedules and statements required by Fed. R. Bankr. P. 1007 shall be filed with the Clerk.~~

COMMENTS

The existing rule is deleted in its entirety. Electronic images are now, and will continue to be, the official record. Even for those entities who will be permitted to file documents employing a paper medium (e.g., pro se litigants), their paper filings are imaged, and made an electronic record. Accordingly, there is no reason to require the filing of multiple copies of any paper document.

RULE 1007-1 LISTS, SCHEDULES AND STATEMENTS

PROPOSED AMENDMENT

- (a) Separate List of Creditors/Social Security Number

Each petition shall be accompanied by an original matrix of all creditors and their last known complete addresses and shall conform to the specifications of MLBR Official Local Form 1. Any creditors subsequently added to the matrix shall be included in an amended matrix filed in compliance with MLBR 1009-1 which amended matrix shall be served simultaneously on the United States trustee. A matrix or Statement of Debtor's Social Security Number (Form B21) not filed with the original petition shall be filed no later than three (3) court days from the date of the filing of the petition. Failure to timely comply with

RED-LINED RULE

- (a) Separate List of ~~Creditors~~
Creditors/Social Security Number

Each petition shall be accompanied by an original matrix of all creditors and their last known complete addresses and shall conform to the specifications of MLBR Official Local Form 1. Any creditors subsequently added to the matrix shall be included in an amended matrix filed in compliance with MLBR 1009-1 which amended matrix shall be served simultaneously on the United States trustee. A matrix ~~or Statement of Debtor's Social Security Number (Form B21)~~ or Statement of Debtor's Social Security Number (Form B21) not filed with the original petition shall be filed no later than three (3) court days from the date of the filing of the petition. Failure to timely comply with

this requirement shall result in dismissal of the case without further notice.

(b) Answer "None" to be Stated

Each item in the schedules and statement of affairs shall be completed. Items for which no other entry can be made shall be completed by the entry "none" or "not applicable," whichever response is appropriate.

(c) Corporate, Partnership or Trust Petitions

(1) A petition by a corporation shall be signed or verified by an officer or agent of the corporation and shall be accompanied by a copy of the resolution of the board of directors or other evidence of the officer's or agent's authority to file the petition on behalf of the corporation.

(2) A petition by a partnership or a trust shall be signed or verified by a general partner, trustee or appropriate agent and shall be accompanied by evidence of the signing party's authority to file the petition.

(3) A petition filed on behalf of a corporation, partnership or trust shall indicate that the debtor is represented by counsel and shall state the attorney's name, address and telephone number.

(4) Failure to comply with this rule shall result in dismissal of the case within seven (7) days after the Court issues a notice of defective filing.

this requirement shall result in dismissal of the case without further notice.

(b) Answer "None" to be Stated

Each item in the schedules and statement of affairs shall be completed. Items for which no other entry can be made shall be completed by the entry "none" or "not applicable," whichever response is appropriate.

(c) Corporate, Partnership or Trust Petitions

(1) A petition by a corporation shall be signed or verified by an officer or agent of the corporation and shall be accompanied by a copy of the resolution of the board of directors or other evidence of the officer's or agent's authority to file the petition on behalf of the corporation.

(2) A petition by a partnership or a trust shall be signed or verified by a general partner, trustee or appropriate agent and shall be accompanied by evidence of the signing party's authority to file the petition.

(3) A petition filed on behalf of a corporation, partnership or trust shall indicate that the debtor is represented by counsel and shall state the attorney's name, address and telephone number.

(4) Failure to comply with this rule shall result in dismissal of the case within seven (7) days after the Court issues a notice of defective filing.

COMMENTS

This amendment is technical in nature, intended to conform with amendments to Fed. R. Bankr. P. 1007(f), which require a debtor to submit a statement under penalty of perjury setting out the debtor's Social Security number. The form is necessary because Rule Fed. R. Bankr. P. 1005 provides that the caption of the petition includes only the final four digits of the debtor's Social Security number. The statement provides the information necessary for the clerk to include the debtor's full Social Security number on the notice of the meeting of creditors, as required under Fed. R. Bankr. P. 2002(a)(1). Creditors in a case, along with the trustee and United States trustee will receive the full Social Security number on their copy of the notice of the meeting of creditors.

RULE 1015-1 JOINT ADMINISTRATION OF CASES PENDING IN THE SAME COURT

NEW RULE

PROPOSED AMENDMENT

RED-LINED RULE

- (a) Motion for Joint Administration. A request for an order allowing joint administration of two or more related cases pursuant to Fed. R. Bankr. P. 1015-b shall be made by motion. In the motion for joint administration, the moving party shall 1) designate the name and number of the lead case for conducting proceedings in the jointly administered cases; 2) state the cause warranting joint administration, including the reasons supporting the proposed lead case designation; and 3) state any known facts which may give rise to actual or potential conflicts of interest warranting protection of the interests of creditors of the various estates. A motion for joint administration shall be filed in each case for which joint administration is proposed. A motion for joint administration shall be served by the moving party on all creditors and equity security holders who have requested notice in accordance with Fed. R. Bankr. P. 2002(i), any committee elected under § 705 or appointed under § 1102 of the

NONE

Bankruptcy Code, the twenty largest unsecured creditors in each case as listed on Official Form 4, all secured creditors and taxing authorities, all attorneys of record, any appointed trustee, and the United States trustee. The court shall grant the motion for joint administration if it is likely to ease the administrative burden on the parties and the court.

- (b) Notice and Effect of Order. Upon entry of an order authorizing joint administration of cases, or upon the automatic allowance of a motion for joint administration in accordance with (c) below, the moving party shall serve notice of said order upon all creditors and interested parties of all debtors that are the subject of the motion. The court shall enter the order in each of the other related cases in addition to the designated lead case. An order approving joint administration shall not effect substantive consolidation of the respective debtors' estates.
- (c) Automatic Joint Administration of Chapter 11 Cases. If a motion for joint administration of debtors, other than individual debtors, is filed at the same time as the filing of the petitions commencing the cases proposed to be jointly administered, the motion for joint administration shall be treated as an emergency motion and shall be allowed effective upon filing, subject to reconsideration as set forth in (d) below.
- (d) Reconsideration. The Court may reconsider an order allowing joint administration upon motion of any party in interest or *sua sponte*,

COMMENTS

This rule is new.

Subparagraphs (a) and (b) are a codification of existing practice and are now set forth in a local rule in order to better inform parties from other jurisdictions who may be unaware of local practice.

Subparagraphs (c) and (d) will facilitate Chapter 11 administration in large cases. Related cases are now routinely administered jointly, but only after court allowance of rarely opposed motions filed in each of the cases. A rule which would enable joint administration of such cases by default will effect cost savings for the parties and promote judicial economy.

RULE 2016-1(d) APPLICATION FOR COMPENSATION

PROPOSED AMENDMENT

- (d) (1) All applications which seek more than \$35,000.00 in compensation, or are otherwise very lengthy, must be divided into narrative sections and must utilize the project categories set forth in subsection (2) below. Each narrative section within each project category must represent a task, must describe the task and the benefit to the estate, and must identify the work done by each professional. There shall be attached to each narrative section a specific description of services performed under such project category each day by each person and the time devoted to such services on that day by each person. The end of each narrative section must include a summary chart that conforms to the requirements of section (a)(2)(A)-(F) of this rule.
- (2) The following project categories (as described below) are to be utilized in all applications submitted pursuant to this rule. Applications may contain

RED-LINED RULE

- (d) (1) All applications which seek more than \$35,000.00 in compensation, or are otherwise very lengthy, must be divided into narrative sections and must utilize the project categories set forth in subsection (2) below. (See MLBR Appendix 7 as an example). Each narrative section within each project category must represent a task, must describe the task and the benefit to the estate, and must identify the work done by each professional. There shall be attached to ~~the~~each narrative section a specific description of services performed under such ~~task~~project category each day by each person and the time devoted to such services on that day by each person. The end of each narrative section must include a summary chart that conforms to the requirements of section (a)(2)(A)-(F) of this rule.
- (2) The following project categories (as described below) are to be utilized in all applications

additional categories as may be required in a particular case:

- (A) Asset Analysis and Recovery: identification and review of potential assets including causes of action and non-litigation recoveries, and appraisals of assets;
- (B) Asset Disposition: sales, leases, matters under 11 U.S.C. § 365, abandonment and related transaction work;
- (C) Business Operations: issues related to debtor-in-possession operating in chapter 11 cases, such as employee issues, vendor issues, lease and contract issues and other similar matters, as well as analysis of tax issues and preparation of tax returns;
- (D) Case Administration: coordination and compliance activities (including preparation of statements of financial affairs, schedules, lists of contracts, and United States Trustee interim statements and operating reports), contacts with the United States Trustee, and general creditor inquiries;
- (E) Claims Administration and Objections: specific claim inquiries, bar date motions, analyses,

submitted pursuant to this rule.
Applications may contain
additional categories as may be
required in a particular case:

- (A) Asset Analysis and Recovery: identification and review of potential assets including causes of action and non-litigation recoveries, and appraisals of assets;
- (B) Asset Disposition: sales, leases, matters under 11 U.S.C. § 365, abandonment and related transaction work;
- (C) Business Operations: issues related to debtor-in-possession operating in chapter 11 cases, such as employee issues, vendor issues, lease and contract issues and other similar matters, as well as analysis of tax issues and preparation of tax returns;
- (D) Case Administration: coordination and compliance activities (including preparation of statements of financial affairs, schedules, lists of contracts, and United States Trustee interim statements and operating reports), contacts with the United States Trustee, and general creditor inquiries;
- (E) Claims Administration and Objections: specific claim

	objections and allowance of claims;		<u>inquiries, bar date motions, analyses, objections and allowance of claims;</u>
(F)	Employee Benefits and Pensions: issues such as severance, retention, 401(k) coverage and continuance of pension plans;	<u>(F)</u>	<u>Employee Benefits and Pensions: issues such as severance, retention, 401(k) coverage and continuance of pension plans;</u>
(G)	Employment Applications and Objections: preparation of employment applications, motions to establish interim compensation procedures, and review of and objections to employment applications of others;	<u>(G)</u>	<u>Employment Applications and Objections: preparation of employment applications, motions to establish interim compensation procedures, and review of and objections to employment applications of others;</u>
(H)	Fee Applications and Objections: preparation of fee applications and review of and objections to fee applications of others;	<u>(H)</u>	<u>Fee Applications and Objections: preparation of fee applications and review of and objections to fee applications of others;</u>
(I)	Financing: matters under 11 U.S.C. §§ 361, 363 and 364, including cash collateral and secured claims, and analysis of loan documents;	<u>(I)</u>	<u>Financing: matters under 11 U.S.C. §§ 361, 363 and 364, including cash collateral and secured claims, and analysis of loan documents;</u>
(J)	Litigation: a separate category should be utilized for each litigation matter;	<u>(J)</u>	<u>Litigation: a separate category should be utilized for each litigation matter;</u>
(K)	Meetings of Creditors: preparing for and attending conference of creditors, meetings held pursuant to 11 U.S.C. § 341, and other creditors' committee meetings;	<u>(K)</u>	<u>Meetings of Creditors: preparing for and attending conference of creditors, meetings held pursuant to 11 U.S.C. § 341, and other creditors' committee meetings;</u>

(L) Plan and Disclosure Statement: formulation, presentation and confirmation, compliance with confirmation order, related orders and rules, disbursement and case closing activities (except those relating to allowance of any objections to claims); and

(M) Relief from Stay Proceedings: matters relating to termination or continuation of automatic stay under 11 U.S.C. § 362.

(L) Plan and Disclosure Statement: formulation, presentation and confirmation, compliance with confirmation order, related orders and rules, disbursement and case closing activities (except those relating to allowance of any objection to claims);and

(M) Relief from Stay Proceedings: matters relating to termination or continuation of automatic stay under 11 U.S.C. § 362;

COMMENTS

The amendment is designed to provide further guidance to attorneys by refining the project categories in the preparation of fee applications.

RULE 3007-1 OBJECTIONS TO CLAIMS

PROPOSED AMENDMENTS

(c) If a claimant contests an objection to claim, the claimant shall file with the Clerk a written response to the objection, which response shall state with particularity why the objection to the claim should be overruled. The response shall be served on the party objecting to the claim and any other party entitled to notice of the response. In addition, at the time of the service of the response, the claimant should also serve on the party objecting to the claim documentation in support of the allowance of the claim. A claimant who does not file a timely response to a

RED-LINED RULE

(c) If a claimant contests an objection to claim, the claimant shall file with the Clerk a written response to the objection, which response shall state with particularity why the ~~proof of claim should be allowed, shall contain any documentation in support of allowance of the proof of claim, and shall state why the~~ objection to the ~~proof of~~ claim should be overruled. ~~Any~~The response ~~to an objection to claim~~ shall be served on the party objecting to the claim and any other party entitled to notice of the response. In addition, at the time of the service of the response, the claimant should also

properly served objection to claim will be deemed to have agreed that the objection to claim may be sustained. The Court, in its discretion, may cancel the hearing on any properly served objection to claim to which a timely response has not been filed and may sustain the objection to claim without further notice or hearing.

serve on the party objecting to the claim documentation in support of the allowance of the claim. A claimant who does not file a timely response to a properly served objection to claim will be deemed to have agreed that the objection to claim may be sustained. The Court, in its discretion, may cancel the hearing on any properly served objection to claim to which a timely response has not been filed and may sustain the objection to claim without further notice or hearing.

COMMENTS

The amendment eliminates the requirement that all documentation supporting a claim be attached to the response to a claim objection. The existing rule was often burdensome to claimants and sometimes impractical where such documentation was voluminous. The amendment suggests that the documents be attached, but leaves any production requirement to discovery.

RULE 4001-1(b) MOTIONS FOR RELIEF FROM STAY; SUBMISSION OF MOTIONS AND OPPOSITIONS TO MOTIONS

PROPOSED AMENDMENTS

- (b) If the motion contains a request for authority to foreclose pursuant to a mortgage or security interest, the movant shall provide the following information:
- (1) If the movant seeks relief for cause pursuant to 11 U.S.C. § 362(d)(1), then the cause shall be specifically stated in the motion.
 - (2) If the movant seeks relief with respect to a stay of an act against property pursuant to 11 U.S.C. §

RED-LINED RULE

- (b) If the motion contains a request for authority to foreclose pursuant to a mortgage or security interest, the movant shall provide the following information:
- (1) If the movant seeks relief for cause pursuant to 11 U.S.C. § 362(d)(1), then the cause shall be specifically stated in the motion.
 - (2) If the movant seeks relief with respect to a stay of an act against property pursuant to 11 U.S.C. §

362(d)(1) or (d)(2), then the motion shall state:

- (A) the amounts and priority of the debt alleged to be owed to the movant;
- (B) the identification, amount, and priority of each other encumbrance affecting the property, including real estate taxes and other municipal charges;
- (C) the total of the amounts set forth in subsections (a) and (b);
- (D) the fair market value and liquidation value of the collateral, with any available appraisal(s) attached;
- (E) either that (i) there is no other collateral securing the obligation, or (ii) there is other collateral securing the obligation, indicating the identity, value and valuation method and attaching any available appraisal(s);
- (F) the original holder of the obligations secured by the security interest and/or mortgage and every subsequent transferee, if known to the movant, and whether the movant is the holder of that obligation or an agent of the holder; and
- (G) if known to the movant, whether and where any

362(d)(1) or (d)(2), then the motion shall state:

- (A) the amounts and priority of the debt alleged to be owed to the movant;
- (B) the identification, amount, and priority of each other encumbrance affecting the property, including real estate taxes and other municipal charges;
- (C) the total of the amounts set forth in subsections (a) and (b);
- (D) the fair market value and liquidation value of the collateral, with any available appraisal(s) attached; **and**
- (E) either that (i) there is no other collateral securing the obligation, or (ii) there is other collateral securing the obligation, indicating the identity, value and valuation method and attaching any available appraisal(s) **∴**;
- (F) the original holder of the obligations secured by the security interest and/or mortgage and every subsequent transferee, if known to the movant, and whether the movant is the holder of that obligation or an agent of the holder; and**
- (G) if known to the movant, whether and where any**

declaration of homestead
has been recorded against
the property;

declaration of homestead
has been recorded against
the property;

(3) If the movant seeks relief from
stay pursuant to 11 U.S.C. §
362(d)(3), the motion shall state:

- (A) whether a plan of
reorganization has been
filed in the case;
- (B) whether the debtor has
commenced monthly
payments to creditors with
interests in the real estate
pursuant to 11 U.S.C. §
362(d)(3)(B); and
- (C) the original holder of the
obligations secured by the
security interest and/or
mortgage and every
subsequent transferee, if
known to the movant, and
whether the movant is the
holder of that obligation or
an agent of the holder.

(3) If the movant seeks relief from
stay pursuant to 11 U.S.C. §
362(d)(3), the motion shall state:

- (A) whether a plan of
reorganization has been
filed in the case; ~~and~~
- (B) whether the debtor has
commenced monthly
payments to creditors with
interests in the real estate
pursuant to 11 U.S.C. §
362(d)(3)(B); ~~and~~
- (C) the original holder of the
obligations secured by the
security interest and/or
mortgage and every
subsequent transferee, if
known to the movant, and
whether the movant is the
holder of that obligation or
an agent of the holder.

COMMENTS

This rule facilitates the filing and consideration of motions seeking relief from the automatic stay under Section 362 of the Bankruptcy Code. It sets forth the content to be included in such motions. The amendment adds two additional requirements. First, in light of an increasing number of claim and security transfers between holders of debt as well as changes in servicers (often obfuscating the identity of the true holder), the amended rule requires that the history of such transfers be set forth in the motion, but only to the extent that the information is known to the movant. Second, in light of the significant impact of a homestead exemption upon the disposition of property of the estate, the existence of such an exemption must now be disclosed if known to the movant.

RULE 4001-2. USE OF CASH COLLATERAL, OBTAINING

CREDIT AND STIPULATIONS RELATING TO SAME

PROPOSED AMENDMENTS

- (a) A motion for use of cash collateral, for authority to obtain credit, or a stipulation relating to same shall set forth the total dollar amount of the request for use of funds, the specific uses to which the funds will be put, the debtor's proposed budget for the use of the funds, pricing and economic terms including interest rates and fees, maturity, termination and default provisions, disclosure by the debtor as to whether it has reason to believe that the budget will be adequate to pay all administrative expenses due and payable during the period covered by the budget, the amount of debt asserted to be owed to any creditor claiming an interest in the collateral, the value of the collateral which secures the creditor's asserted interest, any proposal for providing adequate protection including any priority or superpriority provisions, including the effect thereof on existing liens and any carve-outs from liens or superpriorities, and any choice of law provision. If the credit is to be extended pursuant to a loan agreement or similar agreement, the agreement must be attached to the motion, together with a separate summary of its terms. If the debtor seeks authority to use cash collateral or to obtain credit on an emergency or expedited basis, the debtor shall state the nature of the emergency requiring an emergency or expedited determination.
- (b) A motion for use of cash collateral, for authority to obtain credit, or a stipulation relating to same as well as any proposed orders for which entry is sought shall be served on all creditors who assert an

RED-LINED RULE

- (a) A motion for use of cash collateral, for authority to obtain credit, or a stipulation relating to same shall set forth the total dollar amount of the request for use of funds, the specific uses to which the funds will be put, the debtor's proposed budget for the use of the funds, pricing and economic terms including interest rates and fees, maturity, termination and default provisions, disclosure by the debtor as to whether it has reason to believe that the budget will be adequate to pay all administrative expenses due and payable during the period covered by the budget, the amount of debt asserted to be owed to any creditor claiming an interest in the collateral, the value of the collateral which secures the creditor's asserted interest, ~~and any~~ proposal for providing adequate protection including any priority or superpriority provisions, including the effect thereof on existing liens and any carve-outs from liens or superpriorities, and any choice of law provision. If the credit is to be extended pursuant to a loan agreement or similar agreement, the agreement must be attached to the motion, together with a separate summary of its terms. If the debtor seeks authority to use cash collateral or to obtain credit on an emergency or expedited basis, the debtor shall state the nature of the emergency requiring an emergency or expedited determination.
- (b) A motion for use of cash collateral, for authority to obtain credit, or a stipulation relating to same as well as any proposed orders for which entry is sought shall be served on all creditors who assert an

interest in the cash collateral and their attorneys, if known, any taxing authority that has a claim against the debtor, the debtor's twenty (20) largest unsecured creditors, the members of any committee appointed in the case and counsel to any committee, any parties who have filed a request for service of all pleadings and notices and the United States trustee.

- (c) Subject to section (d), the following provisions contained in an agreement between the debtor and the holder of a secured claim as to use of cash collateral, obtaining credit, or adequate protection, or any interim or final order approving or authorizing the use of cash collateral, obtaining credit, or adequate protection, shall be unenforceable:
- (1) Cross-collateralization clauses: Provisions that elevate prepetition debt to administrative expense or higher status or secure the repayment of prepetition debt with postpetition assets, other than (i) a claim arising from postpetition advances which constitute an additional non-replacement extension of credit; or (ii) a claim representing the diminution in value of the secured claim after the commencement of the case;
- (2) Concessions as to the status of prepetition lien or debt: Provisions or findings of fact that bind the debtor, the estate representative or other parties in interest with respect to the validity, perfection, priority, enforceability or amount of the secured creditor's prepetition lien or debt;

interest in the cash collateral and their attorneys, if known, any taxing authority that has a claim against the debtor, the debtor's twenty (20) largest unsecured creditors, the members of any committee appointed in the case and counsel to any committee, any parties who have filed a request for service of all pleadings and notices and the United States trustee.

- (c) Subject to section (d), the following provisions contained in an agreement between the debtor and the holder of a secured claim as to use of cash collateral, obtaining credit, or adequate protection, or any interim or final order approving or authorizing the use of cash collateral, obtaining credit, or adequate protection, shall be unenforceable:
- ~~(1) — any acknowledgment of the validity, amount, perfection, priority, extent or enforceability of the secured claim, if the agreement or order purports to bind any party other than the debtor, unless the agreement or order affords an objection period of not less than ninety (90) days after (i) for any party in interest, the entry of the order approving the agreement; (ii) for the creditors' committee, the entry of an order approving the employment of counsel to the creditors' committee; and (iii) for a Chapter 11 or Chapter 7 trustee, the entry of an order approving the employment of counsel to said Chapter 11 or Chapter 7 trustee;~~
- ~~(2) — any waiver of defenses by the debtor or estate representative;~~

- (3) Provisions creating liens on bankruptcy causes of action: Provisions that grant liens on the estate's claims arising under 11 U.S.C. sections 506(c), 544, 545, 547, 548 or 549;
- (4) Waivers: Provisions that seek a waiver of or restrict in any way rights that the debtor or estate representative may have under sections 506(c), 544, 545, 547, 548 or 549; or that purport to release, waive or restrict alleged prepetition claims by the debtor or the estate against the secured creditor; or that in any way restrict the ability of the debtor or the estate representative to file a plan or that prohibit or restrict any proposed treatment of a creditor in that plan;
- (5) Right to relief from stay: Provisions that grant automatic relief from stay upon the occurrence of any event; or that purport to bind the court to an expedited or emergency hearing on a request for such relief; or that limit in any way the court's consideration of issues that may arise under section 362(d) or the debtor's or estate representative's rights to bring those issues before the court;
- (6) Rollups: provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of a secured creditor's prepetition debt;

~~(3) any postpetition lien which purports to secure any claim of a secured creditor other than (i) a claim arising from post petition advances) which constitute an additional non-replacement extension of credit; or (ii) a claim representing the diminution in value of the secured claim after the commencement of the case;~~

~~(4) any grant of a security interest in avoidance power recoveries available to the trustee;~~

~~(5) any provision granting a creditor relief from the automatic stay without further order or hearing upon the breach of the cash collateral, adequate protection or postpetition financing order or agreement; or~~

~~(6) any waiver by the debtor or the estate representative of rights provided by 11 U.S.C. § 506(c), in whole or in part.~~

(1) Cross-collateralization clauses: Provisions that elevate prepetition debt to administrative expense or higher status or secure the repayment of prepetition debt with postpetition assets, other than (i) a claim arising from postpetition advances which constitute an additional non-replacement extension of credit; or (ii) a claim representing the diminution in value of the secured claim after the commencement of the case;

(2) Concessions as to the status of prepetition lien or debt: Provisions or findings of fact that bind the debtor, the estate

- | | | |
|--|-------------------|--|
| <p>(7) Non-consensual priming: Provisions that create a lien senior or equal to any existing lien without the consent of that lienholder;</p> | | <p><u>representative or other parties in interest with respect to the validity, perfection, priority, enforceability or amount of the secured creditor's prepetition lien or debt;</u></p> |
| <p>(8) Disparate carveouts: Provisions that provide fee or expense carveouts for any professional disparate from those provided to any and all professionals whose employment is approved by the court;</p> | <p><u>(3)</u></p> | <p><u>Provisions creating liens on bankruptcy causes of action: Provisions that grant liens on the estate's claims arising under 11 U.S.C. sections 506(c), 544, 545, 547, 548 or 549;</u></p> |
| <p>(9) Waiver of right to seek use of cash collateral: Provisions that limit the right of the debtor or the estate representative to move for an order authorizing the use of cash collateral or that seek to prime the secured position of any other secured party under Section 364(d) in the absence of the secured creditor's consent;</p> | <p><u>(4)</u></p> | <p><u>Waivers: Provisions that seek a waiver of or restrict in any way rights that the debtor or estate representative may have under sections 506(c), 544, 545, 547, 548 or 549; or that purport to release, waive or restrict alleged prepetition claims by the debtor or the estate against the secured creditor; or that in any way restrict the ability of the debtor or the estate representative to file a plan or that prohibit or restrict any proposed treatment of a creditor in that plan;</u></p> |
| <p>(10) Waiver of procedural requirements for foreclosure: provisions that waive the procedural requirements for foreclosure required under applicable nonbankruptcy law;</p> | | |
| <p>(11) Venue in foreign jurisdiction: Provisions that place venue in a jurisdiction other than this court in the event of a dispute under any agreement;</p> | <p><u>(5)</u></p> | <p><u>Right to relief from stay: Provisions that grant automatic relief from stay upon the occurrence of any event; or that purport to bind the court to an expedited or emergency hearing on a request for such relief; or that limit in any way the court's consideration of issues that may arise under section 362(d) or the debtor's or estate representative's rights to bring those issues before the court;</u></p> |
| <p>(12) Payment of secured creditor's expenses: Provisions that require the debtor to pay a secured creditor's expenses and attorney's fees in connection with a proposed financing or use of cash collateral without any notice or review by the office of the</p> | <p><u>(6)</u></p> | <p><u>Rollups: provisions that deem prepetition secured debt to be</u></p> |

United States Trustee and the court;

- (13) Termination; Default; Remedies: Provisions that provide that the use of cash collateral will cease or the financing agreement will default, on (i) the filing of a challenge to lender's prepetition lien or lender's prepetition conduct; (ii) entry of an order granting relief from automatic stay (except as to material assets); (iii) grant of a change of venue with respect to the case or any adversary proceeding; (iv) the making of a motion by a party in interest seeking any relief (as distinct from an order granting such relief); (v) management changes or the departure, from the debtor, of any identified employees;

- (14) Release of Liability: Provisions that purport to release the prepetition lender's liability for alleged pre-petition torts, breaches of contract, or lender liability, releases of pre-petition defenses and/or counterclaims, and provisions that shorten the period of limitations within which any party in interest (including a successor trustee) may bring causes of action against the lender.

- (d) Notwithstanding section (c), the Court may order the enforcement of any terms and conditions on the use of cash collateral or obtaining credit, provided that (i) the proposed order or agreement specifically states that the proposed terms and conditions vary from the requirements of section (c), and (ii) any

postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of a secured creditor's prepetition debt;

- (7) Non-consensual priming: Provisions that create a lien senior or equal to any existing lien without the consent of that lienholder;

- (8) Disparate carveouts: Provisions that provide fee or expense carveouts for any professional disparate from those provided to any and all professionals whose employment is approved by the court;

- (9) Waiver of right to seek use of cash collateral: Provisions that limit the right of the debtor or the estate representative to move for an order authorizing the use of cash collateral or that seek to prime the secured position of any other secured party under Section 364(d) in the absence of the secured creditor's consent;

- (10) Waiver of procedural requirements for foreclosure: provisions that waive the procedural requirements for foreclosure required under applicable nonbankruptcy law;

- (11) Venue in foreign jurisdiction: Provisions that place venue in a jurisdiction other than this court in the event of a dispute under any agreement;

- (12) Payment of secured creditor's expenses: Provisions that require

such proposed terms and conditions are conspicuously and specifically set forth in the proposed agreement or order.

(e) Preliminary and Final Orders; Notice

- (1) A single motion may be filed seeking entry of an interim and final order authorizing use of cash collateral or a borrowing or approving a stipulation relating to same. The motion shall be accompanied by any proposed order for which entry is sought. Notice of the motion and any notice of any hearing shall be served on the United States trustee, as well as those parties required by Fed. R. Bankr. P. 4001(b)(1) and (c)(1).
- (2) The Court may enter an Interim Preliminary Order authorizing use of cash collateral or borrowing, or a stipulation relating to same only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing. Any provision of an Interim Preliminary Order may be reconsidered at the Final Hearing. Provisions in an Interim Preliminary Order shall not be binding on the Court with respect to the provisions of the Final Order, except that a lender: (a) will be afforded the benefits and protections of the Interim Preliminary Order for funds advanced during the term of the Interim Preliminary Order, and (b) will not be required to advance funds under a Final Order which contains provisions contrary to or inconsistent with the Interim Preliminary Order.

the debtor to pay a secured creditor's expenses and attorney's fees in connection with a proposed financing or use of cash collateral without any notice or review by the office of the United States Trustee and the court;

(13) Termination; Default; Remedies: Provisions that provide that the use of cash collateral will cease or the financing agreement will default, on (i) the filing of a challenge to lender's prepetition lien or lender's prepetition conduct; (ii) entry of an order granting relief from automatic stay (except as to material assets); (iii) grant of a change of venue with respect to the case or any adversary proceeding; (iv) the making of a motion by a party in interest seeking any relief (as distinct from an order granting such relief); (v) management changes or the departure, from the debtor, of any identified employees;

(14) Release of Liability: Provisions that purport to release the prepetition lender's liability for alleged pre-petition torts, breaches of contract, or lender liability, releases of pre-petition defenses and/or counterclaims, and provisions that shorten the period of limitations within which any party in interest (including a successor trustee) may bring causes of action against the lender.

- (d) Notwithstanding section (c), the Court may order the enforcement of any terms

- (3) A final hearing on a motion authorizing use of cash collateral or a borrowing, or a stipulation relating to same shall not be held earlier than 15 days after service of the notice of hearing.

and conditions on the use of cash collateral or obtaining credit, provided that (i) the proposed order or agreement specifically states that the proposed terms and conditions vary from the requirements of section (c), and (ii) any such proposed terms and conditions are conspicuously and specifically set forth in the proposed agreement or order.

(e) Preliminary and Final Orders; Notice

(1) A single motion may be filed seeking entry of an interim and final order authorizing use of cash collateral or a borrowing or approving a stipulation relating to same. The motion shall be accompanied by any proposed order for which entry is sought. Notice of the motion and any notice of any hearing shall be served on the United States trustee, as well as those parties required by Fed. R. Bankr. P. 4001(b)(1) and (c)(1).

(2) The Court may enter an Interim Preliminary Order authorizing use of cash collateral or borrowing, or a stipulation relating to same only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing. Any provision of an Interim Preliminary Order may be reconsidered at the Final Hearing. Provisions in an Interim Preliminary Order shall not be binding on the Court with respect to the provisions of the Final Order, except that a lender: (a) will be afforded the benefits and protections of the Interim Preliminary Order for funds advanced during the term of the

Interim Preliminary Order, and (b) will not be required to advance funds under a Final Order which contains provisions contrary to or inconsistent with the Interim Preliminary Order.

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(3) A final hearing on a motion authorizing use of cash collateral or a borrowing, or a stipulation relating to same shall not be held earlier than 15 days after service of the notice of hearing.

COMMENTS

This rule is intended to facilitate the filing of those cash collateral and postpetition financing motions which are typically required in Chapter 11 cases.

Subparagraph (a) is amended to further identify those court concerns which should be addressed in a properly drafted motion. This is particularly valuable for those out of state practitioners who may be otherwise disadvantaged if unaware of local practice.

Subparagraphs (c) and (d) list those provisions in such motions which courts have suggested merit special attention, because, historically, individual judges have either not approved such provisions or required that they be limited or altered in some way. Because these provisions may be difficult to identify in a large document, subparagraphs (c) and (d) together work to void those provisions unless their existence is highlighted for the court. The amendments are designed to further identify, update or refine the categories of those provisions which must be highlighted.

RULE 5005-4(a) FACSIMILE FILINGS

PROPOSED AMENDMENTS

(a) The Court will accept for filing documents transmitted by facsimile machine only if the documents are permitted to be filed non-electronically pursuant to Rule 1 of

ORIGINAL RULE

(a) The Court will accept for filing documents ~~electronically~~ transmitted by facsimile machine ~~or similar device, except for t~~
~~The he following:~~

Appendix 8, except that the following documents may be filed by facsimile machine only with the prior permission of the Clerk, the Deputy Clerk or their designee:

- (1) documents constituting a pleading for which a filing fee is required; and
- (2) documents which exceed 35 pages, exclusive of the certificate of service

only if the documents are permitted to be filed non-electronically pursuant to Rule 1 of Appendix 8, except that the following documents may be filed by facsimile machine only with the prior permission of the Clerk, the Deputy Clerk or their designee:

- (1) documents constituting a pleading for which a filing fee is required; and
- (2) documents, ~~including a motion for emergency or expedited determination;~~ which exceed ~~15~~ 35 pages, exclusive of the certificate of service;

~~———— (3) ——— proofs of claim and all documents sworn to under the pains and penalties of perjury; and~~

~~———— (4) ——— all documents which constitute a higher offer to a notice of sale pursuant to 11 U.S.C. Section 363.~~

COMMENTS

This amendment is best understood in conjunction with proposed amended Rule 9036-1 and Rule 1 of Appendix 8 (the electronic filing rules), below. Effective January 1, 2005, the bankruptcy court will accept only electronically filed documents, except in the limited circumstances set forth in Rule 1 of Appendix 8. Accordingly, this rule, which permits filing of paper copies by facsimile transmission, was amended to conform to those limitations.

RULE 6004-1 SALE OF ESTATE PROPERTY

PROPOSED AMENDMENTS

(a) Private Sales

- (1) Motion to Sell

RED-LINED RULE

(a) Private Sales

- ~~———— (1) ——— Contents of Notice~~
- ~~———— (A) ——— Unless the Court orders otherwise, a notice of~~

(A) Every notice of private sale shall be accompanied by a motion for authority to sell, whether or not the sale is to be free and clear of liens or interests. The motion shall identify the holder of any lien or interest, shall state the efforts made by the estate representative in exploring the market for the property, shall state whether the proposed sale is to be free and clear of liens or interests, shall seek approval of any proposed distribution of proceeds, and shall state why a private sale, rather than a public sale, is in the estate's best interest. If all or substantially all of a chapter 11 debtor's assets are to be sold, the motion shall state why the sale is proposed under 11 U.S.C. § 363 rather than through a chapter 11 plan and shall contain a practical and abbreviated equivalent of the adequate information required in a disclosure statement to a chapter 11 plan.

(B) By motion served on the debtor or debtor's counsel, the United States trustee, any secured creditor or its counsel, the 20 largest unsecured creditors, the members and counsel of any approved creditors or equity committee and any attorneys who have filed

~~proposed private sale shall be served upon the following parties: all creditors, parties in interest, including the United States trustee, parties who have filed appearances and requested service of all pleadings and notices, and parties regarded by the estate representative as potential purchasers, including, if appropriate, dealers in the property and competitors of the debtor. The notice shall be served no less than twenty (20) days prior to the deadline for filing objections or higher offers.~~

~~(B) The notice of private sale shall be substantially similar to MLBR Official Form 2A. The notice shall contain blank spaces for the deadline for filing objections and higher offers, as well as a blank space for the date and time of the hearing on the sale. Higher offers, together with any requisite deposit required by the notice, shall be submitted to the estate representative by the deadline established by the Court and a copy of any higher offer shall be filed with the Court. The notice shall state that, unless otherwise ordered by the Court, a sealed bid auction among the initial~~

appearances in the case,
the estate representative:

- (i) may obtain prior approval of any term of the proposed sale; and
- (ii) must obtain prior approval from the Court of any terms for the proposed sale protecting the initial proposed purchaser, including the amount of a break-up fee or the minimum increase required for a higher offer, unless (1) the proposed breakup fee does not exceed the lesser of 5% of the proposed original purchase price or \$50,000 and is subject to final court approval upon application by the bidder; and (2) the minimum increase required for a higher offer does not exceed 5% of the proposed original purchase price.

~~proposed purchaser and any parties submitting higher offers shall take place in court on the hearing date. Upon filing of the proposed notice, the Clerk shall assign a deadline for filing objections and making higher offers and shall fix a hearing date. The estate representative shall then serve the completed notice as required by this rule or other order of the Court and shall file a certificate of service within seven (7) days of service.~~

~~(2)~~

(1) Motion to Sell

- (A) Every notice of private sale shall be accompanied by a motion for authority to sell, whether or not the sale is to be free and clear of liens or interests. The motion shall identify the holder of any lien or interest, shall state the efforts made by the estate representative in exploring the market for the property, shall state whether the proposed sale is to be free and clear of liens or interests, shall seek approval of any proposed distribution of proceeds, and shall state why a private sale, rather than a public sale, is in the estate's best interest. If all or substantially all of a chapter 11 debtor's assets

(2) Contents of Notice of Sale

- (A) The notice of private sale shall be substantially similar to MLBR Official Form 2A. The proposed notice shall be attached to

the motion to sell filed with the Court and shall contain blank spaces for the deadline for filing objections and higher offers, as well as a blank space for the date and time of the hearing on the sale. Higher offers, together with any requisite deposit required by the notice, shall be submitted to the estate representative by the deadline established by the Court and a copy of any higher offer shall be filed with the Court. The notice shall state whether the sale shall be free and clear of liens or interests, the method of auction proposed by the estate representative, including without limitation by sealed bid or open auction, and that the method for auction shall be determined by the Court at or prior to the hearing on the proposed sale. Upon receipt of the proposed notice, the Clerk shall assign a deadline for filing objections and making higher offers, schedule a hearing date, and transmit such dates to the moving party by telephone or such other means as the Clerk deems appropriate. The estate representative shall then serve the motion to sell and the completed notice as required by subsection (a)(3) of this rule.

are to be sold, the motion shall state why the sale is proposed under 11 U.S.C. § 363 rather than through a chapter 11 plan and shall contain a practical and abbreviated equivalent of the adequate information required in a disclosure statement to a chapter 11 plan.

~~(B)~~ — ~~Except as provided below~~

(B) By motion served on the debtor or debtor's counsel, the United States trustee, any secured creditor or its counsel, the 20 largest unsecured creditors, the members and counsel of any approved creditors or equity committee and any attorneys who have filed appearances in the case, the estate representative must:

(i) may obtain prior ~~court~~ approval of any ~~terms in the notice protecting any offeror, including (1) any benefit or advantage offered to~~ term of the proposed sale; and

(ii) must obtain prior approval from the Court of any terms for the proposed sale protecting the initial proposed purchaser ~~which is~~

- (B) Unless the movant requests or is required to obtain advance approval of the form of notice and/or the terms of the proposed sale pursuant to subsection 2(B) of this rule, the proposed notice need not be served on any party.
- (3) Service of Motion to Sell and Completed Notice
- (A) Unless the Court orders otherwise, the motion to sell and the completed notice of proposed private sale shall be served upon the following parties: all creditors, parties in interest, including the United States trustee, parties who have filed appearances and requested service of all pleadings and notices. A copy of the completed notice should also be served on parties regarded by the estate representative as potential purchasers, including, if appropriate, dealers in the property and competitors of the debtor. The motion and completed notice shall be served no less than twenty (20) days (plus such additional time as may be provided in Fed. R. Bankr. P. 9006(f)) prior to the deadline for filing objections or higher offers. The motion to sell need not be served on any party
- ~~not offered to other bidders or (2) a breakup fee or reimbursement of any offeror's expenses. Notwithstanding the foregoing, prior, including the amount of a break-up fee or the minimum increase required for a higher offer, unless (1) the proposed breakup fee does not exceed the lesser of 5% of the proposed original purchase price or \$50,000 and is subject to final court approval shall not be required in connection with minimum overbids not in excess of 5% of the initial proposed upon application by the bidder; and (2) the minimum increase required for a higher offer does not exceed 5% of the proposed original purchase price.~~
- ~~(3) — Court Approval~~
(2) Contents of Notice of Sale
- (A) The notice of private sale shall be substantially similar to MLBR Official Form 2A. The proposed

until the Clerk has provided the information necessary to serve the completed notice.

- (B) The estate representative shall file a certificate of service within seven (7) days of service of the motion to sell and the completed notice.

(4) Court Approval of Sale

- (A) If there are no objections or higher offers timely filed with the Court by the deadline, the Court may approve the sale without holding the scheduled hearing.
- (B) Within three (3) days of receipt of a written request by the debtor, estate representative, or other party in interest, the Clerk shall issue a certificate of no objections concerning the sale of property of the estate.

(b) Public Auctions

(1) Court Authorization

The estate representative, with prior Court approval, may sell estate property by public auction. Subsequent confirmation by the Court of the auction is not required unless such confirmation is a condition of the Court's approval. The notice of public sale shall be substantially similar to MLBR Official Form 2B. The

notice shall be attached to the motion to sell filed with the Court and shall contain blank spaces for the deadline for filing objections and higher offers, as well as a blank space for the date and time of the hearing on the sale. Higher offers, together with any requisite deposit required by the notice, shall be submitted to the estate representative by the deadline established by the Court and a copy of any higher offer shall be filed with the Court. The notice shall state whether the sale shall be free and clear of liens or interests, the method of auction proposed by the estate representative, including without limitation by sealed bid or open auction, and that the method for auction shall be determined by the Court at or prior to the hearing on the proposed sale. Upon receipt of the proposed notice, the Clerk shall assign a deadline for filing objections and making higher offers, schedule a hearing date, and transmit such dates to the moving party by telephone or such other means as the Clerk deems appropriate. The estate representative shall then serve the motion to sell and the completed notice

estate representative shall file a motion to sell the estate assets, and state why a public, rather than a private, sale is requested. Any auction advertisement placed by an auctioneer or estate representative shall conspicuously state the bankruptcy case name and number. The proposed notice shall be attached to the motion to sell but need not be served on any party. Upon receipt of the proposed notice, the Clerk shall assign a deadline for filing objections, fix a hearing date, and transmit such dates to the moving party by telephone or such other means as the Clerk deems appropriate. The estate representative shall then serve the motion to sell and the completed notice in the manner provided in subsection (a)(3) of this rule or other order of the Court and shall file a certificate of service within seven (7) days of service.

(2) Restrictions

An auctioneer shall not introduce non-bankruptcy estate items at an auction without the Court's prior approval. An auctioneer employed by an estate representative shall not bid on property of the estate. No buyer's premium shall be charged. Failure to comply with this subsection shall result in denial of all compensation and/or the issuance of sanctions.

(3) Qualification of Auctioneer

as required by subsection (a)(3) of this rule.

(B) Unless the movant requests or is required to obtain advance approval of the form of notice and/or the terms of the proposed sale pursuant to subsection 2(B) of this rule, the proposed notice need not be served on any party.

(3) Service of Motion to Sell and Completed Notice

(A) Unless the Court orders otherwise, the motion to sell and the completed notice of proposed private sale shall be served upon the following parties: all creditors, parties in interest, including the United States trustee, parties who have filed appearances and requested service of all pleadings and notices. A copy of the completed notice should also be served on parties regarded by the estate representative as potential purchasers, including, if appropriate, dealers in the property and competitors of the debtor. The motion and completed notice shall be served no less than twenty (20) days (plus such additional time as may be provided in Fed. R. Bankr. P. 9006(f)) prior to the deadline for filing

- (A) An auctioneer shall not be authorized to conduct a public auction of property of an estate without first obtaining the Court's specific prior approval of the auctioneer's employment, filing with the Court a bond in an amount fixed by the United States trustee, and furnishing the United States trustee with a copy of that bond. The bond shall be conditioned on the faithful performance of the auctioneer's duties and the auctioneer's accounting for all money and property of the estate that comes into his or her possession.
- (B) To avoid the necessity of filing separate bonds for smaller auction sales, the auctioneer may file with the Court a blanket bond similarly conditioned in a base amount fixed from time to time by the United States trustee to cover various cases in which the auctioneer may act. The auctioneer shall also provide the United States trustee with a copy of the blanket bond. If at any time the value of goods of various estates in the auctioneer's custody exceeds the amount of the blanket bond, the auctioneer shall obtain a separate bond or bonds so that the full amount of all goods of various
- objections or higher offers. The motion to sell need not be served on any party until the Clerk has provided the information necessary to serve the completed notice.
- (B) The estate representative shall file a certificate of service within seven (7) days of service of the motion to sell and the completed notice.
- (4) Court Approval of Sale
- (A) If there are no objections or higher offers timely filed with the Court by the deadline, the Court may approve the sale without holding the scheduled hearing.
- (B) Within three (3) days of receipt of a written request by the debtor, estate representative, or other party in interest, the Clerk shall issue a certificate of no objections concerning the sale of property of the estate.
- ~~(C) Private Sale Book~~
- ~~The estate representative shall file two additional copies of the notice marked "Copies for Notice of Pending Sales Book." The Clerk shall maintain for public inspection at each division office a volume containing copies~~

bankruptcy estates in the auctioneer's custody is covered.

~~of all notices of pending private sales.~~

- (C) As a condition of the employment of an auctioneer in any bankruptcy estate, the auctioneer shall file a statement under the penalty of perjury that all goods of bankruptcy estates in the auctioneer's custody are fully covered at all times by separate bonds or blanket bonds or both. The auctioneer shall also state (i) his or her qualifications, (ii) where the auctioneer is licensed, (iii) whether the auctioneer is in good standing in all jurisdictions in which he or she is licensed, and (v) whether the auctioneer is subject to any disciplinary proceedings or has been subject to any disciplinary proceedings in the five years preceding the filing of the application.

(4) Attendance at Auction Sale

The estate representative or a representative of the trustee shall be present at an auction sale.

(5) Auctioneer's Compensation and Expenses

- (A) The auctioneer shall file and serve an application for compensation and reimbursement of expenses setting forth the

~~(D) For the purposes of this rule, the term estate representative shall include a chapter 7 trustee, chapter 11 trustee, chapter 11 debtor in possession, chapter 12 trustee, and chapter 13 debtor.~~

(b) Public Auctions

(1) Court Authorization

The estate representative, with prior Court approval, may sell estate property by public auction. Subsequent confirmation by the Court of the auction is not required unless such confirmation is a condition of the Court's approval. The notice of public sale shall be substantially similar to MLBR Official Form 2B. The estate representative shall file a motion to sell the estate assets, and state why a public, rather than a private, sale is requested. Any auction advertisement placed by an auctioneer or estate representative shall conspicuously state the bankruptcy case name and number. The ~~definition of~~ proposed notice shall be attached to the motion to sell but need not be served on any party. Upon receipt of the proposed notice, the Clerk shall assign a deadline for filing objections, fix a hearing date, and transmit such dates to the moving party by telephone or such other means as the Clerk deems appropriate. The estate

amount requested, services rendered, time spent, and actual expenses incurred as required by Fed. R. Bankr. P. 2016(a).

representative ~~set forth~~ shall then serve the motion to sell and the completed notice in the manner provided in subsection (a)(3) ~~(D)~~ shall apply under this rule.

(B) Auctions of Personal Property

Unless otherwise ordered by the Court, with respect to auctions of personal property, the auctioneer's compensation shall not exceed the following percentages of gross proceeds:

- (i) 10% of the first ten thousand dollars (\$10,000) or part thereof;
- (ii) 7% of the next ten thousand dollars (\$10,000) or part thereof;
- (iii) 6% of the next thirty-five thousand dollars (\$35,000) or part thereof; and
- (iv) 5% of the balance.

(C) Real Estate Auctions

Unless otherwise ordered by the Court, with respect to sales of real property, the auctioneer's compensation shall not exceed the greater of:

~~(2)~~ of this rule or other order of the Court and shall file a certificate of service within seven (7) days of service.

(2) Restrictions

Text Moved Here from (b)(1)(D)

~~(D)~~—An auctioneer shall not introduce non-bankruptcy estate items at an auction without the Court's prior approval. An auctioneer employed by an estate representative shall not bid on property of the estate. No buyer's premium shall be charged. Failure to comply with this subsection shall result in denial of all compensation and/or the issuance of sanctions.

End Of Moved Text

(3) Qualification of Auctioneer

(A) An auctioneer shall not be authorized to conduct a public auction of property of an estate without first obtaining the Court's specific prior approval of the auctioneer's employment, filing with the Court a bond in an amount fixed by the United States trustee, and furnishing the United States trustee with

(i) 10% of the first fifty thousand dollars (\$50,000) realized in excess of the amount of encumbrances, plus 2 ½ % of the balance of the equity; or

(ii) \$500.00.

(D) Auction Expenses

The auctioneer shall be reimbursed for actual and necessary expenses incurred in connection with an auction, including advertising, if the auctioneer has obtained approval by the Court in advance of the auction for these expenses. Unless otherwise ordered by the Court, the auctioneer shall not be reimbursed for any overhead expense associated with the auction, including labor, cleaning, setting up, lotting, and tagging.

c) Internet Auction Mechanisms

(1) With prior Court approval, after appropriate notice as required by Fed. R. Bankr. P. 2002 (a), the estate representative, or an auctioneer or other professional authorized by the Court to sell estate property, may sell any asset or assets of the estate by public auction through the use of an automated Internet auction,

a copy of that bond. The bond shall be conditioned on the faithful performance of the auctioneer's duties and the auctioneer's accounting for all money and property of the estate that comes into his or her possession.

(B) To avoid the necessity of filing separate bonds for smaller auction sales, the auctioneer may file with the Court a blanket bond similarly conditioned in a base amount fixed from time to time by the United States trustee to cover various cases in which the auctioneer may act. The auctioneer shall also provide the United States trustee with a copy of the blanket bond. If at any time the value of goods of various estates in the auctioneer's custody exceeds the amount of the blanket bond, the auctioneer shall obtain a separate bond or bonds so that the full amount of all goods of various bankruptcy estates in the auctioneer's custody is covered.

(C) As a condition of the employment of an auctioneer in any bankruptcy estate, the auctioneer shall file a statement under the penalty of perjury that all goods of bankruptcy

listing, or brokerage mechanism ("Internet Auction Mechanism").

- (2) In any motion requesting such approval, the estate representative must state:
- (A) The name and uniform resource locators (URL) of the proposed Internet Auction Mechanisms;
 - (B) Why the estate representative believes that use of the Internet Auction Mechanism is in the best interests of the estate;
 - (C) Whether the estate representative has or any party in interest is known to have any connections with the proposed Internet Auction Mechanism or any expected bidder;
 - (D) All fees associated with use of the Internet Auction Mechanism;
 - (E) Whether use of the Internet Auction Mechanism is subject to rules, policies, procedures or terms or conditions and, if so: (i) provide either a copy thereof or the URL at which they can be examined and (ii) summarize any such rules, policies, procedures or terms or conditions that are likely to result in any restrictions on bidding for the asset(s) proposed to be sold or limitations on

estates in the auctioneer's custody are fully covered at all times by separate bonds or blanket bonds or both. The auctioneer shall also state (i) his or her qualifications, (ii) where the auctioneer is licensed, (iii) whether the auctioneer is in good standing in all jurisdictions in which he or she is licensed, and (v) whether the auctioneer is subject to any disciplinary proceedings or has been subject to any disciplinary proceedings in the five years preceding the filing of the application.

(4) Attendance at Auction Sale

The estate representative or a representative of the trustee shall be present at an auction sale.

(45) Auctioneer's Compensation and Expenses

- (A) The auctioneer shall file and serve an application for compensation and reimbursement of expenses setting forth the amount requested, services rendered, time spent, and actual expenses incurred as required by Fed. R. Bankr. P. 2016(a). ~~The Court shall award the auctioneer reasonable compensation and reimbursement of actual expenses not to exceed the percentages of gross proceeds set forth in~~

- the estate representative in offering asset(s) for sale with full or partial reserve or otherwise controlling the determination to sell each asset;
- (F) The mechanism for payment to the estate; and
- (G) That the Internet Auction Mechanism will not provide auction services or any other services beyond access to its automated on-line services and related customer support.
- (3) Any such motion must request authority for the estate representative to (a) comply with any rules, policies, procedures, or terms or conditions of the Internet Auction Mechanism and enter into any required agreements, (b) consummate such sale, and (c) pay any and all fees associated with use of the Internet Auction Mechanism, each without further order of the Court.
- (4) Nothing in this rule shall limit applicability of the requirements of Local Rule 6004-1(b) with respect to any auctioneer hired by an estate representative to provide services beyond access to an Internet Auction Mechanism.
- (5) Unless the Court orders otherwise, a listing placed on an Internet Auction Mechanism shall state the bankruptcy case name and number and that the sale procedure has been approved by the United States Bankruptcy
- ~~subsections (B) and (C) of this rule.~~
- (B) Auctions of Personal Property
- Unless otherwise ordered by the Court, with respect to auctions of personal property, the auctioneer's compensation shall not exceed the following percentages of gross proceeds:
- (i) 10% of the first ten thousand dollars (\$10,000) or part thereof;
- (ii) 7% of the next ten thousand dollars (\$10,000) or part thereof;
- (iii) 6% of the next thirty-five thousand dollars (\$35,000) or part thereof; and
- (iv) 5% of the balance.
- (C) Real Estate Auctions
- Unless otherwise ordered by the Court, with respect to sales of real property, the auctioneer's compensation ~~(exclusive of actual expenses)~~ shall not exceed the greater of:
- (i) 10% of the first fifty thousand dollars (\$50,000) realized in excess of the

Court for the District of
Massachusetts.

amount of
encumbrances; ~~and~~

- (d) For the purposes of this rule, the term estate representative shall include a chapter 7 trustee, chapter 11 trustee, chapter 11 debtor in possession, chapter 12 trustee, and chapter 13 debtor.

(2) ~~—~~ . plus 2½ % of the balance of the equity, ~~with a minimum fee ; of or~~

(ii) \$500.00.

(D) Auction Expenses

The auctioneer shall be reimbursed for actual and necessary expenses incurred in connection with an auction, including advertising, if the auctioneer has obtained approval by the Court in advance of the auction for these expenses. Unless otherwise ordered by the Court, the auctioneer shall not be reimbursed for any overhead expense associated with the auction, including labor, cleaning, setting up, lotting, and tagging.

c) Internet Auction Mechanisms

(1) With prior Court approval, after appropriate notice as required by Fed. R. Bankr. P. 2002 (a), the estate representative, or an auctioneer or other professional authorized by the Court to sell estate property, may sell any asset or assets of the estate by public auction through the use of an automated Internet auction, listing, or brokerage mechanism ("Internet Auction Mechanism").

- (2) In any motion requesting such approval, the estate representative must state:
- (A) The name and uniform resource locators (URL) of the proposed Internet Auction Mechanisms:
- (B) Why the estate representative believes that use of the Internet Auction Mechanism is in the best interests of the estate:
- (C) Whether the estate representative has or any party in interest is known to have any connections with the proposed Internet Auction Mechanism or any expected bidder:
- (D) All fees associated with use of the Internet Auction Mechanism:
- (E) Whether use of the Internet Auction Mechanism is subject to rules, policies, procedures or terms or conditions and, if so: (i) provide either a copy thereof or the URL at which they can be examined and (ii) summarize any such rules, policies, procedures or terms or conditions that are likely to result in any restrictions on bidding for the asset(s) proposed to be sold or limitations on the estate representative in offering asset(s) for sale with full or partial reserve

or otherwise controlling the determination to sell each asset;

(F) The mechanism for payment to the estate; and

(G) That the Internet Auction Mechanism will not provide auction services or any other services beyond access to its automated on-line services and related customer support.

(3) Any such motion must request authority for the estate representative to (a) comply with any rules, policies, procedures, or terms or conditions of the Internet Auction Mechanism and enter into any required agreements, (b) consummate such sale, and (c) pay any and all fees associated with use of the Internet Auction Mechanism, each without further order of the Court.

(4) Nothing in this rule shall limit applicability of the requirements of Local Rule 6004-1(b) with respect to any auctioneer hired by an estate representative to provide services beyond access to an Internet Auction Mechanism.

(5) Unless the Court orders otherwise, a listing placed on an Internet Auction Mechanism shall state the bankruptcy case name and number and that the sale procedure has been approved by the United States Bankruptcy Court for the District of Massachusetts.

(d) For the purposes of this rule, the term estate representative shall include a chapter 7 trustee, chapter 11 trustee, chapter 11 debtor in possession, chapter 12 trustee, and chapter 13 debtor.

~~(5) Public Sale Book~~

~~The estate representative shall file two additional copies of the notice marked "Copies for Notice of Pending Sales Book." The Clerk shall maintain for public inspection at each division office a volume containing copies of all notices of pending public sales.~~

COMMENTS

This rule governs public and private sales of estate property. There are three material amendments. First, the rule has been generally reorganized and several court procedures clarified. Second, the amended rule now permits the estate representative to offer to a prospective first bidder on estate property "breakup fees" of up to 5% of the proposed purchase price, without prior court authorization. "Breakup fees" in the context of this rule constitutes reimbursement of reasonable expenses incurred by the first bidder if that bidder is unsuccessful in subsequent competitive bidding for the property. The actual amount to be paid, however, remains subject to court allowance. Third, subparagraph (c) sets forth new procedures for offering estate property by auction over the internet.

RULE 7037-1(c) FAILURE TO MAKE DISCOVERY; SANCTIONS

PROPOSED AMENDMENTS

(c) If the parties are unable to resolve a discovery dispute and a discovery motion is filed, the parties shall file a joint stipulation specifying separately

RED-LINED RULE

(c) If the parties are unable to resolve a discovery dispute and a discovery motion is filed, the parties shall file a joint stipulation specifying separately

and with particularity (1) the date of the discovery conference and, if it was not held, the reason why; (2) the matters on which the parties reached agreement; (3) each contested discovery issue that remains to be determined by the Court; and (4) a statement of each party's position as to each contested issue, with supporting legal authority. The stipulation shall be filed within seven (7) days after the discovery motion. Notwithstanding the foregoing, if the only discovery dispute constitutes a failure of a party to serve any response, the discovery motion shall so state, and the joint stipulation need not be filed. The failure of any party or attorney to cooperate in resolving discovery disputes may result in the imposition of sanctions, including but not limited to, the sanctions provided in Fed. R. Civ. P. 37.

and with particularity (1) the date of the discovery conference and, if it was not held, the reason why; (2) the matters on which the parties reached agreement; (3) each contested discovery issue that remains to be determined by the Court; and (4) a statement of each party's position as to each contested issue, with supporting legal authority. The stipulation shall be filed within seven (7) days after the discovery motion. Notwithstanding the foregoing, if the only discovery dispute constitutes a failure of a party to serve any response, the discovery motion shall so state, and the joint stipulation need not be filed. The failure of any party or attorney to cooperate in resolving discovery disputes may result in the imposition of sanctions, including but not limited to, the sanctions provided in Fed. R. Civ. P. 37.

COMMENTS

The existing rule requires a joint stipulation setting forth contested issues in discovery disputes. The amendment deletes that requirement where the dispute relates to a party's failure to respond to discovery.

RULE 9009-2 CASE MANAGEMENT

NEW RULE

PROPOSED AMENDMENTS

Upon motion of the estate representative or *sua sponte*, the Court may order that one or more case management procedures be employed in order to ease the administrative burden on the

RED-LINED AMENDMENT

N/A

parties or the Court. Such procedures may relate to, *inter alia*, omnibus hearing dates, notices of agenda, and payment of interim compensation and reimbursement of expenses and other matters typical to Chapter 11 cases or cases under other Chapters with sufficient complexity. Sample case management procedures are contained in Appendix 6. A motion requesting case management orders shall highlight, in bold-faced type, those provisions which would vary from those set forth in Appendix 6.

COMMENTS

The new rule recognizes that in cases of large size (typically, but not exclusively, Chapter 11 cases), certain case management procedures would facilitate the administration of the case and the disposition of disputes. Sample, non-binding, examples of certain case management procedures are set forth in new Appendix 6. (Existing Appendix 6 is proposed to be deleted as set forth below.) It is expected that parties and the court will employ these samples as templates, adapting them, as they see fit, to meet the circumstances of each case. Over time, as other or better such procedures are identified, additional samples may be offered, and Appendix 6 amended accordingly.

RULE 9029-3 APPLICABILITY OF U.S. DISTRICT COURT LOCAL RULES

PROPOSED AMENDMENTS

The following U.S. District Court Local Rules shall be applicable in the United States Bankruptcy Court for the District of Massachusetts:

- 26.5 (Uniform Definitions in Discovery Requests)
- 56.1 (Motions for Summary Judgment)
- 67.2 (Registry Funds)
- 67.3 (Disbursement of Registry Funds)

RED-LINED RULE

The following U.S. District Court Local Rules shall be applicable in the United States Bankruptcy Court for the District of Massachusetts:

- 26.5 (Uniform Definitions in Discovery Requests)
- 56.1 (Motions for Summary Judgment)
- 67.2 (Registry Funds)
- 67.3 (Disbursement of Registry Funds)

67.4 (Payments and Deposits Made With the Clerk)

81.2 (Definition of Judicial Officer)

83.5.1(b) (Student Practice Rule) (insofar as applicable to civil proceedings)

83.6 (Rules of Disciplinary Enforcement)

201 (Reference to Bankruptcy Court)

202 (Bankruptcy Court Jury Trials)

203 (Bankruptcy Appeals)

204 (Bankruptcy Court Local Rules)

205 (Disciplinary Referrals by Bankruptcy Judges)

The other Local Rules of the United States District Court shall not govern cases or proceedings before the United States Bankruptcy Court.

67.4- (Payments and Deposits Made With the Clerk)

81.2 (Definition of Judicial Officer)

83.5.1(b) (Student Practice Rule) (insofar as applicable to civil proceedings)

83.6 (Rules of Disciplinary Enforcement)

201 (Reference to Bankruptcy Court)

202 (Bankruptcy Court Jury Trials)

203 (Bankruptcy Appeals)

204 (Bankruptcy Court Local Rules)

205 (Disciplinary Referrals by Bankruptcy Judges)

The other Local Rules of the United States District Court shall not govern cases or proceedings before the United States Bankruptcy Court.

COMMENTS

The amendment incorporates the student practice rule now employed by the District Court, so far as the rule may be applicable to bankruptcy cases (i.e., limited to the civil side of that rule).

RULE 9036-1 ELECTRONIC FILING

PROPOSED AMENDMENTS

RED-LINED RULE

~~The procedures~~

All cases open as of the effective date of these rules or filed thereafter will be administered through the Electronic Case Filing System (the "ECF System"). The procedures for electronic filing set forth in Appendix 8 hereof, as amended from time to time, shall be known as the Electronic Filing Rules of the United States Bankruptcy Court for the District of Massachusetts, and shall be referred to in abbreviation as "MEFR." Except as expressly provided in MEFR 1, parties in interest shall file all petitions, motions, applications, memoranda of law or other pleadings or documents only through the ECF System. To the extent that the MEFR conflict with any other provision of the Massachusetts Local Bankruptcy Rules or their appendices, the provisions of the MEFR shall govern.

All cases open as of the effective date of these rules or filed thereafter will be administered through the Electronic Case Filing System (the "ECF System"). The procedures for electronic filing set forth in Appendix 8 hereof, as amended from time to time, shall be known as the Electronic Filing Rules of the United States Bankruptcy Court for the District of Massachusetts, and shall be referred to in abbreviation as "MEFR." Except as expressly provided in MEFR 1, parties in interest shall file all petitions, motions, applications, memoranda of law or other pleadings or documents only through the ECF System. To the extent that the MEFR conflict with the any other provisions of the Massachusetts Local Bankruptcy Rules or their appendices, the provisions of the MEFR shall govern.

COMMENTS

This amended rule should be read in conjunction with amended Rule 1 of Appendix 8 (the electronic filing rules). The amendment renders electronic filing in the bankruptcy court mandatory as of the effective date of these amended rules, subject only to the exceptions set forth in Rule 1 of Appendix 8.

RULE 9074-1 APPEARANCES BY TELEPHONE OR VIDEOCONFERENCE

NEW RULE

PROPOSED AMENDMENTS

Request to Appear By Telephone or Videoconference. A person may appear at a pretrial conference or non-evidentiary hearing by telephone or by videoconference, for good cause shown. The request shall be in writing

RED-LINED AMENDMENT

N/A

and timely filed with the Clerk and will be allowed only if appropriate under the circumstances, considering, without limitation, the nature of the hearing, proximity of the person requesting such an appearance and the resulting savings in travel time and reduction of expenses of that person and/or the court. The telephone numbers and facsimile numbers for the courtroom deputies are set forth in Appendix 5.

COMMENTS

This new rule is a codification of existing practice in the bankruptcy court. It is primarily designed to assist practitioners from other districts unfamiliar with local practice.

APPENDIX 1
CHAPTER 13 RULES
RULE 13-2(a). COMMENCEMENT OF CASE

PROPOSED AMENDMENT

- (a) The debtor¹ shall file each of the following documents:
1. the petition;
 2. Schedules A through J and the Statement of Financial Affairs;
 3. the chapter 13 plan;
 4. the Statement required under Fed. R. Bankr. P. 2016(b) (if applicable);
 5. an application and proposed order authorizing payment of the filing fee in installments (if applicable); and
 6. the matrix (original only) in conformity with MLBR Official Local Form 1 listing the names, addresses and zip codes in alphabetical order of all creditors, parties in interest, debtor's counsel, the debtor, the chapter 13 trustee, and the United States trustee.
 7. If the debtor is a debtor engaged in business, the debtor shall also file and serve on the chapter 13 trustee:
 - A. the Statement of Financial Affairs for debtor engaged in business;

RED-LINED RULE

- (a) The debtor shall file ~~an original and three copies of~~ each of the following documents:
1. the petition;
 2. Schedules A through J and the Statement of Financial Affairs;
 3. the chapter 13 plan;
 4. the Statement required under Fed. R. Bankr. P. 2016(b) (if applicable);
 5. an application and proposed order authorizing payment of the filing fee in installments (if applicable); and
 6. the matrix (original only) in conformity with MLBR Official Local Form 1 listing the names, addresses and zip codes in alphabetical order of all creditors, parties in interest, debtor's counsel, the debtor, the chapter 13 trustee, and the United States trustee.
 7. If the debtor is a debtor engaged in business, the debtor shall also file and serve on the chapter 13 trustee:
 - A. the Statement of Financial Affairs for debtor engaged in business;

B. a profit and loss statement for the calendar year or fiscal year, whichever is applicable, preceding the year in which the case is filed, and a profit and loss statement for the period from the end of the calendar or fiscal year to the date of the filing of the petition;

C. a statement by the debtor as to whether the debtor's business incurs trade debt;

D. a statement of quarterly income and expenses incurred, regardless of whether the debtor incurs trade debt, within thirty (30) days of the close of each quarter, with a copy served on the chapter 13 trustee; and

E. within five (5) days after the commencement of the case:

(i) evidence of appropriate business insurance; and

(ii) evidence that appropriate debtor in possession checking accounts were opened at the

B. a profit and loss statement for the calendar year or fiscal year, whichever is applicable, preceding the year in which the case is filed, and a profit and loss statement for the period from the end of the calendar or fiscal year to the date of the filing of the petition;

C. a statement by the debtor as to whether the debtor's business incurs trade debt;

D. a statement of quarterly income and expenses incurred, regardless of whether the debtor incurs trade debt, within thirty (30) days of the close of each quarter, with a copy served on the chapter 13 trustee; and

E. within five (5) days after the commencement of the case:

(i) evidence of appropriate business insurance; and

(ii) evidence that appropriate debtor in possession checking accounts were opened at the time of the filing

- time of the filing
of the petition;
8. an executed copy of the engagement agreement by and between the debtor and any attorney retained by the debtor, in the form set forth on Official Local Form 8.

- of the petition;
8. an executed copy of the engagement agreement by and between the debtor and any attorney retained by the debtor, in the form set forth on Official Local Form 8.

¹ For the purposes of these chapter 13 rules, the use of the term debtor shall include both debtors in a joint case.

COMMENTS

Where all documents (even those filed in paper) are imaged and the electronic image is the official record, it is immaterial how many copies of a paper document are filed. Accordingly, the requirement to file multiple copies is deleted.

APPENDIX 3

FILING FEES

PROPOSED AMENDMENTS (Effective November 1, 2003)

- (a) New Case, Ancillary Proceeding and Case Reopening

The following fees apply to the filing or reopening of cases:

- | | | |
|-----|-------------------------|-----------|
| (1) | Chapter 7 (Filing) | \$ 209.00 |
| (2) | Chapter 7 (Reopening) | \$ 155.00 |
| (3) | Chapter 9 | \$ 839.00 |
| (4) | Chapter 11 Non-Railroad | \$ 839.00 |

RED-LINED RULE

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The following fees apply to the filing or reopening of cases:

- | | | |
|-----|-------------------------|-----------|
| (1) | Chapter 7 (Filing) | \$ 209.00 |
| (2) | Chapter 7 (Reopening) | \$ 155.00 |
| (3) | Chapter 9 | \$ 839.00 |
| (4) | Chapter 11 Non-Railroad | \$ 839.00 |

- (5) Chapter 11 Non-Railroad (Reopening) \$ 839.00
- (6) Chapter 11 Railroad \$1,039.00
- (7) Chapter 12 (when authorized) \$ 239.00
- (8) Chapter 13 \$ 194.00
- (9) Chapter 13 (Reopening) \$ 155.00
- (10) 11 U.S.C. §304 (Ancillary Proceeding) \$ 839.00
- (11) The fee due upon conversion from a chapter 7 or chapter 13 case to a chapter 11 case is \$645.00.

(b) Motions

- (1) The fee for the filing of a motion for relief from the automatic stay under 11 U.S.C. § 362(d) is \$150.00.
- (2) The fee for the filing of a motion to withdraw the reference is \$150.00.
- (3) The fee for the filing of a motion to compel abandonment of property of the estate is \$150.00.
- (4) The fee for the filing of a motion to convert or a notice of conversion to a chapter 7 case is \$15.00.

(c) Adversary Proceedings

The filing fee for a complaint is \$150.00, except that no fee is required if the United States or the debtor in a chapter 7 or chapter 13 case is the

- (5) Chapter 11 Non-Railroad (Reopening) \$ 839.00
- (6) Chapter 11 Railroad \$1,039.00
- (7) Chapter 12 (when authorized) \$ 239.00
- (8) Chapter 13 \$194.00
- (9) Chapter 13 (Reopening) \$ 155.00
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- (3) The fee for the filing of a motion to compel abandonment of property of the estate is \$150.00.
- (4) The fee for the filing of a motion to convert or a notice of conversion to a chapter 7 case is \$15.00.

(c) Adversary Proceedings

The filing fee for a complaint is \$150.00, except that no fee is required if the United States or the debtor in a

plaintiff. The debtor in possession in a chapter 11 case must pay the filing fee. If a trustee in a case under Title 11 is the plaintiff, the fee shall be payable only from the estate to the extent of available funds. The Court may, upon motion of a trustee, defer payment of the filing fee.

(d) Miscellaneous Fees

- | | | |
|------|---|----------|
| (1) | Notice of Appeal
from Final Order | \$255.00 |
| (2) | Cross Appeal | \$255.00 |
| (3) | Notice of Appeal
from Interlocutory Order
(If a motion for leave to appeal
is allowed, an additional
\$250.00 will be due.) | \$ 5.00 |
| (4) | Amendment to
Schedules D, E and F
or List of Creditors | \$ 26.00 |
| (5) | Clerk's Certificate | \$ 18.00 |
| (6) | Records Search
(If copies are requested,
a copy charge also will be
assessed.) | \$ 26.00 |
| (7) | Retrieval of Closed
File From Federal Records
Center | \$ 45.00 |
| (8) | Certification of
Document | \$ 9.00 |
| (9) | Copies per page | \$.50 |
| (10) | Registering a
Judgment from Another District | \$ 39.00 |
| (11) | Reproduction | \$ 26.00 |

chapter 7 or chapter 13 case is the plaintiff. The debtor in possession in a chapter 11 case must pay the filing fee. If a trustee in a case under Title 11 is the plaintiff, the fee shall be payable only from the estate to the extent of available funds. The Court may, upon motion of a trustee, defer payment of the filing fee.

(d) Miscellaneous Fees

- | | | |
|------|---|----------|
| (1) | Notice of Appeal
from Final Order | \$255.00 |
| (2) | Cross Appeal | \$255.00 |
| (3) | Notice of Appeal
from Interlocutory Order
(If a motion for leave to appeal
is allowed, an additional
\$250.00 will be due.) | \$ 5.00 |
| (4) | Amendment to
Schedules D, E
and F or List-of Creditors | \$ 26.00 |
| (5) | Clerk's Certificate | \$ 18.00 |
| (6) | Records Search
(If copies are requested,
a copy charge also will be
assessed.) | \$ 26.00 |
| (7) | Retrieval of Closed
File From Federal
Records-Center | \$ 45.00 |
| (8) | Certification of-
Document | \$ 9.00 |
| (9) | Copies per page | \$.50 |
| (10) | Registering a
Judgment from Another District | \$ 39.00 |

	of a Tape Recording	(11)	Reproduction of a Tape Recording	\$ 26.00	
(12)	Check Returned Due to Insufficient Funds	\$ 45.00	(12)	Check Returned Due to Insufficient Funds	\$ 45.00

COMMENTS

This is a technical modification only. The words ("when authorized") have been inserted to reflect the fact that Chapter 12 is not yet a permanent part of the Bankruptcy Code and Congressional authorization for Chapter 12 has from time to time lapsed.

APPENDIX 5

COURT DIVISIONS AND CLERK'S OFFICE

PROPOSED AMENDMENTS

(a) Divisions

The District of Massachusetts shall contain the following two (2) divisions:

- (1) Eastern Division: The Eastern Division shall consist of:
 - (A) the counties of Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth, and Suffolk,
 - (B) the county of Essex, with the exception of the towns specifically assigned to the Western Division in section (2), and (C) the following towns in Middlesex County: Arlington, Ashland, Belmont, Burlington, Cambridge, Everett, Framingham,

RED-LINED RULE

(a) Divisions

The District of Massachusetts shall contain the following two (2) divisions:

- (1) Eastern Division: The Eastern Division shall consist of:
 - (A) the counties of Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth, and Suffolk,
 - (B) the county of Essex, with the exception of the towns specifically assigned to the Western Division in section (2), and (C) the following towns in Middlesex County: Arlington, Ashland, Belmont, Burlington, Cambridge,

Holliston, Lexington,
Lincoln, Malden,
Medford, Melrose,
Natick, Newton, North
Reading, Reading,
Sherborn, Somerville,
Stoneham, Wakefield,
Waltham, Watertown,
Wayland, Weston,
Wilmington, Winchester
and Woburn.

Everett, Framingham,
Holliston, Lexington,
Lincoln, Malden,
Medford, Melrose,
Natick, Newton, North
Reading, Reading,
Sherborn, Somerville,
Stoneham, Wakefield,
Waltham, Watertown,
Wayland, Weston,
Wilmington, Winchester
and Woburn.

The address of the Eastern Division is:
Clerk, U.S. Bankruptcy Court, 1101
Thomas P. O'Neill Jr. Federal Building,
10 Causeway Street, Boston, MA
02222-1074.

The address of the Eastern Division is:
Clerk, U.S. Bankruptcy Court, 1101
Thomas P. O'Neill Jr. Federal Building,
10 Causeway Street, Boston, MA
02222-1074.

- (2) Western Division: The Western Division shall consist of (A) the counties of Berkshire, Franklin, Hampden, Hampshire, and Worcester, (B) the county of Middlesex, with the exception of the towns specifically assigned to the Eastern Division in section (1) and the following towns in Essex County: Andover, Boxford, Bradford, Haverhill, Lawrence, Methuen, and North Andover.

- (2) Western Division: The Western Division shall consist of (A) the counties of Berkshire, Franklin, Hampden, Hampshire, and Worcester, (B) the county of Middlesex, with the exception of the towns specifically assigned to the Eastern Division in section (1) and the following towns in Essex County: Andover, Boxford, Bradford, Haverhill, Lawrence, Methuen, and North Andover.

The address of the Western Division is: Clerk, U.S. Bankruptcy Court, Donohue Federal Building, 595 Main Street, Worcester, MA 01608-2076.

The address of the Western Division is: Clerk, U.S. Bankruptcy Court, Donohue Federal Building, 595 Main Street, Worcester, MA 01608-2076.

(b) Emergency Filings

Filings can be made before 8:30 AM or after 4:30 PM on court days or on weekends or holidays for cause and by

(b) Emergency Filings

Filings can be made before 8:30 AM or after 4:30 PM on court days or on weekends or holidays for cause and by

prior arrangement or in emergency circumstances, as determined by the Clerk or his or her designee. With respect to Eastern Division cases, parties should contact the Clerk's office at (617) 565-8950 and press (0) or (617)565-8956 during business hours. With respect to Western Division cases, parties should contact the Clerk's office in Worcester at (508)770-8900 during business hours. At other times, parties should contact the Clerk or his or her designee by calling **beeper no. (800)759-8888 and enter PIN # 1309280.**

(c) Emergency Closings or Delayed Opening

Information as to an emergency closing or delayed opening of the Court is available by calling 1-866-419-5695 (Toll Free).

(d) Courtroom Deputies

The telephone numbers, fax numbers and email addresses (to be employed for forwarding proposed orders), for each of the courtroom deputies are set forth below:

Chief Judge Joan N. Feeney (Mary Donnellan)

Telephone: (617)565-6067
Fax: (617)565-6651
Email: jnf@mab.uscourts.gov

Judge William C. Hillman (Patricia Heaney)

Telephone: (617)565-6073
Fax: (617)565-6652
Email: wch@mab.uscourts.gov

Judge Henry J. Boroff (Stephen Reynolds)

prior arrangement or in emergency circumstances, as determined by the Clerk or his or her designee. With respect to Eastern Division cases, parties should contact the Clerk's office at (617) 565-8950 and press (0) or (617)565-8956 during business hours. With respect to Western Division cases, parties should contact the Clerk's office in Worcester at (508)770-8900 during business hours. At other times, parties should contact the Clerk or his or her designee by calling **beeper no. (800)759-8888 and enter PIN # 1309280.**

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For Chief Judge Joan N. Feeney's Session

Telephone: (617)565-6067
Fax: (617)565-6651
Email: jnf@mab.uscourts.gov

For Judge William C. Hillman's Session

Telephone: (617)565-6073
Fax: (617)565-6652
Email: wch@mab.uscourts.gov

Telephone: (508)770-8936
Fax: 508)770-8958
Email: hjb@mab.uscourts.gov

Judge Joel B. Rosenthal (Halina Magerowski)
Telephone: (508)770-8927
Fax: (508)793-0189
Email: jbr@mab.uscourts.gov

Judge (to be designated) (Regina Brooks)
Telephone: (617)565-5280
Fax: (617)565-6650
Email: (to be designated)

For Judge Henry J. Boroff's Session

Telephone: (508)770-8936
Fax: 508)770-8958
Email: hjb@mab.uscourts.gov

For Judge Joel B. Rosenthal's Session

Telephone: (508)770-8927
Fax: (508)793-0189
Email: jbr@mab.uscourts.gov

For Session of Judge (to be designated)

Telephone: (617)565-5280
Fax: (617)565-6650
Email: (to be designated)

COMMENTS

Effective contact between the bar and the Court is facilitated by providing attorneys with appropriate information as to how to reach those in the court that are primarily responsible for calendaring decisions.

APPENDIX 6

SAMPLE CASE MANAGEMENT PROCEDURES

PROPOSED AMENDMENT

- a. Omnibus Hearing Dates and Notices of Agenda
 - 1. Unless the Court otherwise orders, the Court will conduct omnibus hearings in this case on a (weekly) (bimonthly)

RED-LINED RULE

**APPLICATION FOR COMPENSATION
SAMPLE SUMMARY FEE CHART
DELETED**

**Note Summary Chart Not Included As It
Does Not Format to Column.
To See Summary Chart,**

(monthly) basis ("Omnibus Hearing Dates").

[please go to pg. 92 of the Local Rules.](#)

2. All matters requiring a hearing shall be set for and be heard on one of the Omnibus Hearing Dates unless alternative hearing dates are approved by the Court for good cause shown.
3. In order for a pleading to be heard on an Omnibus Hearing Date, a party must first contact the Court's courtroom deputy and request the scheduling of the hearing. The courtroom deputy shall set the pleading for the first available Omnibus Hearing date, taking into account the time required for notice to other parties and the remaining time available on the Omnibus Hearing Date; and shall set an objection deadline, if any. No motion or application shall be set for hearing absent compliance with Fed. R. Bankr. P. 2002(a) nor shall the hearing be set for less than 7 days from service of that motion or application, unless the Court has allowed a request for expedited determination. The requesting party must file and serve the pleading no later than forty-eight (48) hours after the courtroom deputy has set the pleading for an Omnibus Hearing Date and must indicate on the first page of the pleading the time of the hearing and the deadline for objections, if any.
4. The provisions of MLBR 9013-1 shall continue to govern, except

insofar as they may specifically conflict with the procedures set forth above.

5. Counsel to the estate representative shall maintain, file and serve a Notice of Agenda for each Omnibus Hearing Date as follows:
 - A. A proposed Notice of Agenda shall be filed before 12:00 noon on the day that is two (2) court days before the Omnibus Hearing Date.
 - B. Resolved or continued matters shall be listed ahead of unresolved matters.
 - C. The Notice of Agenda shall be promptly amended as necessary and served on all parties in interest. All amended Notices of Agenda shall list matters as listed in the original Notice of Agenda with all edits and additional information being listed in boldface type.
 - D. For each motion or application, the Notice of Agenda shall indicate:
 - (i) the name of the movant or the applicant, the nature of the motion or application, and the docket

number
(Supporting
papers of the
movant or
applicant shall be
similarly
denoted);

- (ii) the objection
deadline, any
objection filed
and its docket
number, if
available; and
- (iii) whether the
matter is going
forward, whether
a continuance is
requested (and
any opposition to
the continuance, if
known), whether
any or all of the
objections have
been resolved,
and any other
pertinent status
information.

- E. When a matter in an
adversary proceeding is
scheduled to be heard,
the Notice of Agenda
shall indicate the
adversary proceeding
number and the
corresponding docket
number for pleadings
filed in the adversary
proceeding, together
with the information
contained in
subparagraph (d) above,
insofar as applicable.

b. Procedures Governing Payment of Interim Compensation and Reimbursement of Expenses to Professionals Pursuant to 11 U.S.C. §§ 105(a) and 331

1. Scope of Applicability

All professionals retained in a Chapter 11 case pursuant to 11 U.S.C. §§ 327 and 1103 (each, a "Professional") may seek post-petition interim compensation pursuant to these procedures (the "Administrative Fee Order").

2. Submission and Monthly Statements

On or before the twenty-fifth (25th) day of each month following the month for which compensation is sought, each Professional seeking compensation pursuant to the Administrative Fee Order shall serve a monthly fee and expense statement (the "Monthly Fee Statement") upon the following persons:

- A. the officer designated by the debtor to be responsible for such matters;
- B. counsel to the debtor;
- C. any Chapter 7 or 11 trustee;
- D. counsel to all official committees;
- E. the Office of the United

States Trustee;

- F. counsel to all post-petition lenders or their agents; and
- G. any other party the Court may so designate.

3. Content of Monthly Fee Statement

Each Monthly Fee Statement shall contain an itemization of time spent and the applicable hourly rate. All timekeepers must maintain contemporaneous time entries in increments of one-tenth (1/10th) of an hour.

4. Review Period

Each person receiving a Monthly Fee Statement shall have twenty (20) days after service of the Monthly Fee Statement to review it and serve an objection (the "Objection Period").

5. Payment

In the absence of a timely served objection, the estate representative will promptly pay each Professional an amount (the "Interim Payment") equal to the lesser of (i) ninety percent (90%) of the fees and 100 percent (100%) of the expenses requested in the Monthly Fee Statement, or (ii) ninety percent (90%) of the fees and 100 percent (100%) of the expenses not subject to any partial

objection.

6. Objections

- A. If any party objects to a Monthly Fee Statement, it must serve a written objection (the "Notice of Objection to Monthly Fee Statement") and serve it upon the Professional and each of the parties served with the Monthly Fee Statement as set forth above, so that the Notice of Objection to Monthly Fee Statement is received on or before the last day of the Objection Period.
- B. The Notice of Objection to Monthly Fee Statement must set forth the nature of the objection and the amount of fees and/or expenses at issue.
- C. If an estate representative receives an objection to a particular Monthly Fee Statement, the estate representative shall withhold payment of that portion of the Monthly Fee Statement to which the objection is directed, and shall promptly pay the remainder of the fees and disbursements in the percentages set forth above.
- D. If the parties to an

objection are able to resolve their respective dispute(s) following the service of a Notice of Objection to Monthly Fee Statement, and the Professional and the objecting party serve upon each of the parties served with the Monthly Fee Statement as set forth above a statement indicating that the objection is withdrawn, in whole or in part, describing in detail the terms of the resolution, then the estate representative shall promptly pay in accordance with the percentages listed above that portion of the Monthly Fee Statement which is no longer subject to an objection.

- E. If the parties are unable to reach a resolution to the objection within twenty (20) days after service of the objection, the affected Professional may either (a) move to compel the payment with the Court, together with a request for payment of the difference, if any, between the total amount of the Interim Payment sought and the portion of the Interim Payment as to which there is an objection (the "Incremental Amount"); or (b) forgo payment of

the Incremental Amount until the next interim or final fee application, or any other date and time so directed by the Court, at which time it will consider and dispose of the objection, if so requested.

F. Neither an objection to a Monthly Fee Statement nor the failure to object thereto shall prejudice a party's right to object to any fee application on any ground.

G. Failure of a professional to timely serve a Monthly Fee Statement shall not prejudice such professional in seeking interim or final allowance of fees or expenses. Further, any Monthly Fee Statement served after the deadline for such Monthly Fee Statement shall be deemed served at the time that such professional serves a Monthly Fee Statement for the next subsequent period and shall be subject to the Objection Deadline for the Monthly Fee Statement for such subsequent period.

7. Fee Applications

A. Parties seeking compensation pursuant to an Administrative Fee Order shall file at four (4)

month intervals or such other intervals directed by the Court ("Interim Period") an interim fee application. Each Professional seeking approval of its interim fee application shall file with the Court an interim application for allowance of compensation and reimbursement of expenses, pursuant to 11 U.S.C. § 331, of the amounts sought in the Monthly Fee Statements issued during such period (the "Interim Fee Application").

- B. The Interim Fee Application shall comply with the mandates of the Bankruptcy Code, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure and the Local Rules for the United States Bankruptcy Court for the District of Massachusetts.
- C. The Interim Fee Application must be filed within forty-five (45) days after the conclusion of the Interim Period.
- D. In the event any Professional fails to file an Interim Fee Application when due, such Professional will be ineligible to receive further interim payments

or fees or expenses under the Administrative Fee Order until such time as the Interim Fee Application is submitted.

- E. The pendency of a fee application, or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular Monthly Fee Statement, shall not disqualify a Professional from the further payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court. Additionally, the pendency of an objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.
- F. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on the Court's interim or final allowance of compensation and reimbursement of expenses of any

Professionals. All compensation is subject to final approval by the Court.

- G. Counsel for each official committee may, in accordance with the foregoing procedure for monthly compensation and reimbursement to professionals, collect and submit statements of actual expenses incurred, with supporting vouchers, from members of the committee such counsel represents, provided, however, that such committee counsel ensures that these reimbursement requests comply with the applicable rules and those guidelines.

8. Miscellaneous

- A. Any party may object to requests for payments made pursuant to the Administrative Fee Order for good cause, including, without limitation, that the estate representative has not timely filed monthly operating reports or remained current with its administrative expenses and 28 U.S.C. § 1930 fees.
- B. The estate representative shall include all payments to

Professionals on its monthly operating reports, including details of the amount paid to each Professional.

- C. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court.

COMMENTS

See Comment to amended Rule 9009-2. The new Appendix 6 suggests procedures for handling large numbers of hearings and interim fee requests in large cases.

Former Appendix 6 is deleted. It related to the format of fee applications, and its utility has declined over time.

APPENDIX 7 APPLICATION FOR COMPENSATION SAMPLE NARRATIVE OF SERVICES RENDERED

PROPOSED AMENDMENTS

Deleted

NO REPLACEMENT

RED-LINED ORIGINAL RULE

**SAMPLE NARRATIVE
OF SERVICES RENDERED**

COMMENTS

Former Appendix 7 is deleted. It related to the format of fee applications, and its utility has declined over time.

APPENDIX 8 ELECTRONIC FILING

RULE 1. SCOPE OF ELECTRONIC FILING

PROPOSED AMENDMENTS

Electronic filing of petitions, motions, applications, memoranda of law or other pleadings or documents (hereafter "documents") shall be mandatory as set forth in MLBR 9036-1, excepting only documents:

- a) constituting proofs of claim;
- b) filed by parties in interest who are pro se;
- c) constituting a request for ex parte determination or a request for impoundment, pursuant to MLRB 9018-1.
- d) filed by attorneys who:
 - 1. personally, or by an agent, hand deliver the document(s) to the Clerk's Office and scan the document(s) electronically employing equipment supplied and procedures as directed by Clerk's Office personnel; or
 - 2. are unable to file electronically on account of temporary equipment or system breakdown in the attorney's office or the Clerk's Office; or
- e) accepted in paper form with

RED-LINED RULE

~~_____ All cases open as of the effective date of this rule or filed thereafter will be administered through the Electronic Case Filing System (the "ECF System"). Except as expressly provided or in exceptional circumstances, each Registered User (as defined in Rule 2(a) below) shall, on and after ninety (90) days from the effective date of his or her registration, file with the Court electronically all Electronic filing of petitions, motions, applications, memoranda of law or other pleadings and/or documents (collectively hereinafter referred to as "documents").~~
"documents") shall be mandatory as set forth in MLBR 9036-1, excepting only documents:

- a) constituting proofs of claim;
- b) filed by parties in interest who are pro se;
- c) constituting a request for ex parte determination or a request for impoundment, pursuant to MLRB 9018-1.
- d) filed by attorneys who:
 - 1. personally, or by an agent, hand deliver the document(s) to the Clerk's Office and scan the document(s) electronically employing equipment supplied and procedures as directed by Clerk's Office

prior permission of the Clerk,
the Deputy Clerk or their
designee, leave to be given
only on a showing of temporary
exigent circumstances other
than equipment or system
breakdown

personnel; or

(2.) are unable to file
electronically on account
of temporary equipment
or system breakdown in
the attorney's office or
the Clerk's Office; or

e) accepted in paper form with
prior permission of the Clerk,
the Deputy Clerk or their
designee, leave to be given
only on a showing of temporary
exigent circumstances other
than equipment or system
breakdown

COMMENTS

This amended Rule is the centerpiece of this court's intention to mandate electronic filing in all cases. The commencement date is January 1, 2005. Excepted from the mandatory electronic filing requirement are: 1) proofs of claim (filed often by *pro se* creditors); 2) other documents filed by *pro se* parties; 3) documents filed ex-parte or requiring impoundment (which should not be exposed to widespread electronic service); 4) documents filed by attorneys who suffer equipment breakdowns (who will be permitted to file by facsimile, pursuant to Rule 5005-4; 5) documents filed by attorneys who simply choose not to become registered users of the electronic filing system (and who will be permitted to file documents only in the clerk's office in person and provided with imaging equipment in order to convert their documents to electronic format); and 6) attorneys who, for good cause determined in the discretion of the clerk, are permitted a temporary delay in becoming registered users.

APPENDIX 8 ELECTRONIC FILING

RULE 2(a),(c). ELIGIBILITY, REGISTRATION, PASSWORDS

PROPOSED AMENDMENTS

(a) Registered User

The term "Registered User" as employed in these rules shall be deemed to mean an individual who has registered to use this Court's ECF System, with full or limited access, pursuant to subsection (b) hereof. Limited access allows an attorney or non-attorney to become a Registered User for the sole purpose of filing proofs of claim, notice requests, transfers or assignments of claim, and withdrawals of claims.

(b) Eligibility

Attorneys admitted to the bar of the United States District Court for the District of Massachusetts (including those admitted pro hac vice, pursuant to Local Rule 9010-1(b)), attorneys representing the United States of America or any state, the United States trustee and his/her assistants, Chapter 7, 11, 12, or 13 trustees, limited access users, and others as the Court may allow in its discretion on prior motion and order, may register as Registered Users of the ECF System after completion of such electronic filing training as the Clerk of this Court may establish and require from time to time.

RED-LINED RULE

(a) Registered User

The term "Registered User" as employed in these rules shall be deemed to mean an individual who has registered to use this Court's ECF System, with full or limited access, pursuant to subsection (b) hereof. Limited access allows an attorney or non-attorney to become a Registered User for the sole purpose of filing proofs of claim, notice requests, transfers or assignments of claim, and withdrawals of claims.

(b) Eligibility

Attorneys admitted to the bar of the United States District Court for the District of Massachusetts (including those admitted pro hac vice, pursuant to Local Rule 9010-1(b)), attorneys representing the United States of America or any state, the United States trustee and his/her assistants, Chapter 7, 11, 12, or 13 trustees, limited access users, and others as the Court may allow in its discretion on prior motion and order, may register as Registered Users of the ECF System after completion of such electronic filing training as the Clerk of this Court may establish and require from time to time.

COMMENTS

This amendment would permit volume filers of proofs of claim to do so electronically. The

result will be a cost savings for them and for the court.

APPENDIX 8 ELECTRONIC FILING

RULE 4. ENTRY OF COURT ORDERS

PROPOSED AMENDMENTS

The Clerk shall enter all orders, judgments, and proceeding memos on the docket kept by the clerk under Fed. R. Bankr. P. 5003 and 9021 in electronic format. Any order entered electronically without the original signature of a judge shall have the same force and effect as if the judge had affixed his or her signature to a paper copy of the order.

RED-LINED RULE

(a) — The Clerk shall enter all orders, judgments, and proceeding memos on the docket kept by the clerk under Fed. R. Bankr. P. 5003 and 9021 in electronic format. Any order ~~filed~~entered electronically without the original signature of a judge shall have the same force and effect as if the judge had affixed his or her signature to a paper copy of the order.

(b) — ~~A Registered User submitting a document electronically that requires a judge's signature including, without limitation, a proposed order or stipulation, must submit the document in PDF format to the Clerk of the Court.~~

COMMENTS

This amendment permits multiple formats of electronically filed proposed orders. We have found that PDF format is not always flexible enough to permit modification of those proposed orders.

APPENDIX 8 ELECTRONIC FILING

RULE 7. STATEMENTS UNDER OATH; RETENTION REQUIREMENTS

PROPOSED AMENDMENTS

- (a) Unless the Court orders otherwise, all electronically filed documents, (including, without limitation, affidavits or a debtor's petition, schedules, statement of affairs, or amendments thereof) requiring signatures under the penalties of perjury shall also be executed in paper form, together with a Declaration Re: Electronic Filing in the form of Official Form 7. The Declaration Re: Electronic Filing shall be filed with the Court as an imaged, and not electronically created, document, together with or in addition to the document electronically filed with the Court. Said Declaration shall be valid for the declarant for all subsequently filed documents requiring a signature in the case.
- (b) Notwithstanding subsection (a) above, the paper forms of the electronically filed document(s) and the Declaration Re: Electronic Filing shall be retained by the Registered User until five (5) years after the closing of the case. Said paper documents shall be deemed property of the Court and not property of the declarant or the Registered User. The Registered User must produce all such original documents for review or filing at the request of a party in interest or upon order of the Court.

RED-LINED RULE

- (a) Unless the Court orders otherwise, all electronically filed documents, (including, without limitation, affidavits or a debtor's petition, schedules, statement of affairs, or amendments thereof) requiring signatures under the penalties of perjury shall also be ~~maintained~~ executed in paper form ~~by the Registered User until five (5) years after the closing of the case. The declarant shall affix his or her signature in each place where indicated in the paper form and shall also execute in paper form.~~ together with a Declaration Re: Electronic Filing in the form of Official Form 7 ~~., all to be retained by the Registered User as set forth herein. Said documents shall thereafter be deemed property of the Court and not property of the declarant. The Registered User must produce all such original documents for review or filing at the request of a party in interest or order of the Court.~~
- (b) Notwithstanding subsection (a) above, ~~any page of a document containing a signature under the penalties of perjury shall be filed with the Court as an imaged, and not electronically created, document, together with or in addition to the document electronically filed with the Court.~~ the paper forms of the electronically filed document(s) and the Declaration Re: Electronic Filing shall be retained by the Registered User until five (5) years after the closing of the case. Said paper documents shall be deemed property of the Court and

not property of the declarant or the Registered User. The Registered User must produce all such original documents for review or filing at the request of a party in interest or upon order of the Court.

COMMENTS

This rule relates to documents which are executed under oath. Under the present rule, in addition to the electronically filed document, the original must be filed as an imaged (not electronically) filed document; a declaration (Official Form 7) must be filed with the court; and the original document must be retained by the registered user for five (5) years. Under the proposed rule, the imaging requirement is deleted. The present rule was viewed by the bar as onerous and superfluous. We agreed.

APPENDIX 8 ELECTRONIC FILING

RULE 8. SIGNATURES

PROPOSED AMENDMENT

- (a) The user log-in and password required to submit documents to the ECF System serve as the Registered User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of Fed. R. Bankr. P. 9011, the Federal Rules of Bankruptcy Procedure, the local rules of this Court, and any other purpose for which a signature is required. Electronically filed documents must set forth the name, address, telephone number, email address of a Registered User and, if an attorney, his or her BBO or PHV number (see MBLR 9010-3(b)). In addition, the document must include a

RED-LINED RULE

- (a) The user log-in and password required to submit documents to the ECF System serve as the Registered User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of Fed. R. Bankr. P. 9011, the Federal Rules of Bankruptcy Procedure, the local rules of this Court, and any other purpose for which a signature is required. Electronically filed documents must set forth the name, address, telephone number, email address of a Registered User and, if an attorney, his or her BBO or PHV number (see MBLR 9010-3(b)). In addition, the document must include a

signature block where the name of the Registered User and/or affiant is typed but preceded by an "/s/," or is set forth as an imaged or electronically created signature.

- (b) Where an electronically filed document sets forth the consent of more than one party, the additional consents may be supplied by: (1) a scanned document containing all of the necessary signatures; or (2) a representation that the Registered User has authority to consent on behalf of the other parties who are purported signatories to the document; or (3) a notice of endorsement filed by the other signatories no later than three business days after filing of the document; or (4) any other manner approved by the Court.
- (c) All electronic documents filed after the commencement of the case must contain the case caption and number.
- (d) Notwithstanding Fed. R. Bankr. P. 9011(a), an attorney may electronically file an application for compensation for a professional who is not a registered user but whose employment in that case has been authorized previously by order of the court.

signature block where the name of the Registered User and/or affiant is typed; but preceded by an "/s/," or is set forth as an imaged or electronically created signature.

- (b) Where an electronically filed document sets forth the consent of more than one party, the additional consents may be supplied by: (1) a scanned document containing all of the necessary signatures; or (2) a representation that the Registered User has authority to consent on behalf of the other parties who are purported signatories to the document; or (3) a notice of endorsement filed by the other signatories no later than three business days after filing of the document; or (4) any other manner approved by the Court.
- (c) All electronic documents filed after the commencement of the case must contain the case caption and number.
- (d) Notwithstanding Fed. R. Bankr. P. 9011(a), an attorney may electronically file an application for compensation for a professional who is not a registered user but whose employment in that case has been authorized previously by order of the court.

COMMENTS

Occasionally, documents must be filed on behalf of those professionals who are employed by, but are not themselves, registered users (e.g., accountants, auctioneers). Because all documents are now to be filed electronically, but only attorneys (and, to a more limited extent, volume filers of proofs of claim) can become registered users, the rule has been amended so that registered users may file documents electronically on behalf of others.

**APPENDIX 8
ELECTRONIC FILING**

RULE 11. TECHNICAL FAILURES

PROPOSED AMENDMENT

A Registered User whose filing is made untimely as a result of a technical failure may seek appropriate relief from the Court, including, without limitation, leave to file by facsimile and defer payment of any filing fee.

RED-LINED RULE

A Registered User whose filing is made untimely as a result of a technical failure may seek appropriate relief from the Court: including, without limitation, leave to file by facsimile and defer payment of any filing fee.

COMMENTS

When technical failure occurs, facsimile filing under Rule 5005-4 is the most effective alternative in emergency circumstances. In order to ensure the efficacy of the latter, it is necessary to defer any accompanying filing fee.

OFFICIAL FORM 7

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re

Chapter
Bankruptcy No.

Debtor(s)

DECLARATION RE: ELECTRONIC FILING

PART I- DECLARATION ~~OF PETITIONER~~

I [We] _____ and _____, hereby declare(s) under penalty of perjury that all of the information contained in my _____ (singly or jointly the "Document"), filed electronically, is true and correct. I understand that this DECLARATION is to be filed with the Clerk of Court electronically concurrently with the electronic filing of the Document. I understand that failure to file this DECLARATION may cause the Document to be struck and any request contained or relying thereon to be denied, without further notice.

I further understand that, pursuant to the Massachusetts Electronic Filing Local Rule (MEFR) 7(a-b), all paper documents containing original signatures executed under the penalties of perjury and filed electronically with the Court are the property of the bankruptcy estate and shall be maintained by the authorized CM/ECF Registered User for a period of five (5) years after the closing of this case.

Dated:

(Affiant)

(Joint Affiant)

PART II - DECLARATION OF ATTORNEY (IF AFFIANT IS REPRESENTED BY COUNSEL)

I certify that the affiant(s) signed this form before I submitted the Document, I gave the affiant(s) a copy of the Document and this DECLARATION, and I have followed all other electronic filing requirements currently established by local rule and standing order. This DECLARATION is based on all information of which I have knowledge and my signature below constitutes my certification of the foregoing under Fed. R. Bankr. P. 9011. I have reviewed and will comply with the provisions of MEFR 7.

Dated:

Signed: _____
Attorney for Affiant

COMMENTS

See Comment to Rule 7 of Appendix 8.